



Presented by the
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



A Note from ABA President Laurel G. Bellows



For decades, studies have demonstrated that women lawyers are not paid at the same level as their male counterparts. In August 2012, I appointed a blue-ribbon Task Force on Gender Equity to recommend solutions for eliminating gender bias in the legal profession, with a principal focus on the disparity in compensation between male and female partners. This manual is one in a series of projects the Task Force has implemented to promote gender equity.

Corporate clients can play a significant role in effectuating meaningful change for women in law firms. Since 2008, the ABA Commission on Women in the Profession has held a series of national and regional summits for women general counsel and senior in-house counsel to discuss how corporations can use their influence to help women lawyers at law firms advance and succeed. Building on those efforts, *Power of the Purse: How General Counsel Can Impact Pay Equity for Women Lawyers* explains why corporate clients should care about the gender pay gap at law firms and sets forth specific steps they can take to ensure that their corporations are served by firms that are providing, promoting, and achieving a diverse and inclusive workplace.

This manual focuses on ways that in-house counsel can use their considerable economic power—the power of the purse—to increase diversity on law firm teams and make business origination credit and client succession policies more equitable for women lawyers. Working together, general counsel and law firms can help reduce and ultimately eliminate the compensation gap that women continue to experience in the legal profession.

My thanks first go to author Lauren Stiller Rikleen, who pulled the laboring oar in making this manual a reality. Special thanks also go to Roberta D. Liebenberg, Chair of the ABA Task Force on Gender Equity; Stephanie A. Scharf, Task Force Compensation Projects Coordinating Chair; Denise Keane, Task Force General Counsel Project Chair; and Nancy Peterson, VP/Deputy General Counsel and Chief Compliance Officer, AlliedBarton Security Services, for their important contributions in creating this publication. Lastly, deep thanks go to the members of our General Counsel Project Advisory Board, who generously donated their time and insights to this important project. The hard work and tireless efforts of all of these individuals are greatly appreciated.

Laurel G. Bellows
President, American Bar Association (2012–2013)

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Overview

The Task Force on Gender Equity (Task Force) was created by American Bar Association President Laurel G. Bellows to address the continuing problem of gender inequality in the legal profession. Bold action is necessary for women lawyers to achieve parity with their male colleagues, as efforts to date have been insufficient. *Power of the Purse: How General Counsel Can Impact Pay Equity for Women Lawyers* is one of four publications sponsored by the Task Force, directed to law firms, in-house counsel, individual lawyers, and bar associations, all of which focus on recommended policies, practices, and actions for achieving gender equality.¹

The gender gap is particularly acute in law firms, where fundamental change is needed to address and ameliorate long-standing disparities in (1) compensation, (2) elevation to equity partner, and (3) inclusion on the top management and policy committees.² Statistics on the advancement of women paint a stark picture. Since well before the turn of the twenty-first century, women comprised nearly half of the nation's law students.³ That full pipeline should have produced a far different leadership profile than we see in law firms today. Instead, key metrics on women's advancement and compensation have barely budged. The National Association of Women Lawyers and the NAWL Foundation, which have been surveying the nation's 200 largest law firms since 2006, report, "Women have not made significant progress either economically or in reaching leadership roles during the seven years the Survey has measured the impact of gender in law firms."⁴ Women lawyers of color experience even greater barriers to advancement.⁵

The ABA Commission on Women in the Profession (Commission) has long recognized the important role that clients can play to ensure that women outside counsel receive appropriate credit and compensation. Since 2008, the Commission has held a series of national and regional summits for women general counsel and senior in-house counsel to discuss how corporations and firms, working together, can help to close the gender gap. It is noteworthy that Hillary Rodham Clinton, who served as the first chair of the Commission, observed in a groundbreaking 1988 report



on the status of women in the profession that the increased number of women entering the profession *by itself would not* result in an increase in the number of women in positions of power and leadership.⁶

In the sections below, we provide specific steps that corporate clients can take to make certain that they are well served by excellent law firms that provide, promote, and achieve a diverse and inclusive workplace. Our focus is on ways that in-house counsel can use their economic power to minimize—perhaps even eliminate—the compensation gap that women continue to experience in the legal profession. Although the recommendations here were developed in the context of eliminating gender inequity, the Task Force believes that these recommendations apply to all programs that have the goal of increasing the diversity and inclusiveness of outside counsel.

The Task Force has been greatly influenced by the valuable input provided by its distinguished General Counsel Advisory Board. The members of the advisory board generously shared their experiences, provided examples of practices they have implemented with their outside law firms to encourage diversity, and offered their ideas for how best to continue to make a difference. We are also grateful for the thinking of other in-house counsel whom we have consulted in the development of this publication.

It is our hope that in-house counsel and law firms will be inspired by these best practices to take similar steps. A strong commitment is required from all members of the profession to ensure that the justice and equality lawyers seek on behalf of their own clients are also attainable by lawyers themselves.

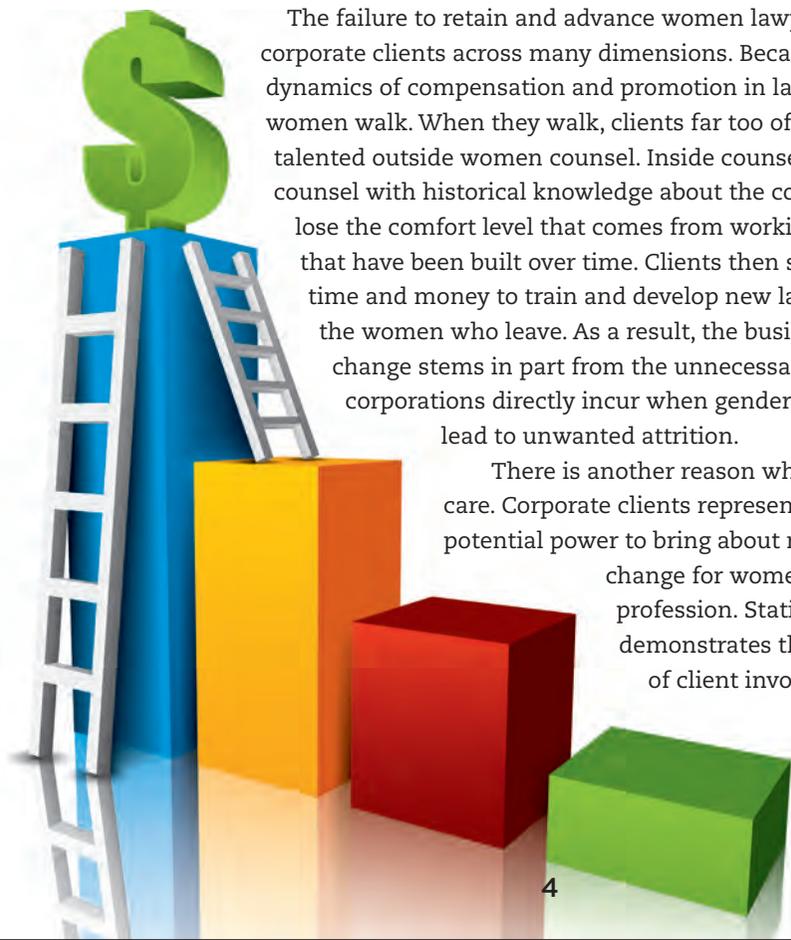


The Business Case— Why Clients Should Care about the Gender Pay Gap at Law Firms

The business case for ensuring a critical mass of senior women and diverse lawyers in law firms is not complex and is well documented. For decades, large numbers of women have been graduating from law school—almost as many as men. Women enter law school with the same qualifications as men, and they graduate from law school with the same range of academic records. After graduation, women enter private practice at the same rate as their male colleagues. But, over time, too many law firms have not succeeded in retaining women lawyers. Even though clients report similar levels of satisfaction with legal services provided by female and male lawyers, numerous studies show that firms are underpromoting and undercompensating women as compared to men.

The failure to retain and advance women lawyers impacts corporate clients across many dimensions. Because of the dynamics of compensation and promotion in law firms, women walk. When they walk, clients far too often lose their talented outside women counsel. Inside counsel lose outside counsel with historical knowledge about the company, and they lose the comfort level that comes from working relationships that have been built over time. Clients then spend significant time and money to train and develop new lawyers to replace the women who leave. As a result, the business case for change stems in part from the unnecessary costs that corporations directly incur when gender inequities lead to unwanted attrition.

There is another reason why clients should care. Corporate clients represent a tremendous potential power to bring about meaningful change for women in the legal profession. Statistical evidence demonstrates the importance of client involvement to



ensure that women lawyers are receiving appropriate origination credit and compensation. In almost half of the 200 largest US law firms, there are no women in the firm's "top 10" rainmakers, and the disparity in compensation increases with seniority. Accordingly, the greatest gender gap in compensation is between male and female equity partners.⁷ The ABA Commission on Women in the Profession collaborated on a research study that shined a much-needed spotlight on the arcane ways in which firms allocate origination credit and compensation, to the detriment of women lawyers.⁸

Partly as a result of this economic disparity, more senior women are leaving their law firms, creating a vacuum of women who can serve in leadership positions and as role models, sponsors, and mentors for younger women. While this attrition is critically important to in-house counsel, it also results in the loss to the client of an attorney who has institutional knowledge and the expertise to perform the client's work. Women can be as proficient and experienced as their male counterparts and, in addition to bringing strong substantive skills and expertise, can bring perspectives and executional approaches that enhance results.

We recognize that there are many social, economic, and institutional factors that impact the retention and attrition of women lawyers practicing in firms, but some of those factors are within the control of the law firm and their corporate clients. This is our focus here: how in-house counsel can strategize, educate, and benchmark their outside legal service providers so the corporation's core values of diversity and inclusion will be mirrored by their outside lawyers. In a business world that is growing smaller with the globalization of industries, and in a society where consumer decisions are made primarily by women, the in-house lawyer cannot afford to build a legal team that fails to reflect the diversity of the broader society.

The most successful and replicated diversity initiatives are "top driven," emerging from within the highest ranks of the corporation or organization. Law departments can play an important role in drafting, overseeing, and monitoring the progress of diversity initiatives to ensure that women attorneys play an integral role in their outside counsel legal team.

These goals need not be accomplished at the expense of excellent service, advice, and outcomes. In fact, they are highly compatible. Clients are extraordinarily well-positioned to provide outside firms with examples of best practices that will lead to greater gender equity in compensation, result in increased advancement and leadership opportunities for women, and reinforce how such decision-making yields excellent results. Working together, clients and lawyers can create real and meaningful opportunities for women within the legal profession.

Current Practices and Beyond

The following sections set forth examples of recommended best practices. These recommendations reflect input from members of the General Counsel Advisory Board and the ABA Task Force on Gender Equity, along with other senior in-house and outside counsel who generously shared their ideas, experiences, and recommendations. Many of the practices below have their roots in the broader diversity context and also are critically important to women's advancement. We have organized our recommendations into six categories, all of which offer ways that in-house lawyers can make significant contributions to the future success of women in the profession:

1. Educating outside counsel about the client's goals for women's advancement, and outreach to firms that share those goals;
2. The client's role in developing women rainmakers;
3. The use of RFPs and other due diligence tools;
4. Benchmarking outside legal providers;
5. Deepened levels of inquiry; and
6. Leading by example.

1. Education and Outreach to Firms that Share Client Goals

As a baseline effort, those who hire outside counsel should educate their law firms about the client's interest in seeing women partners serving as lead lawyers, receiving appropriate origination credit, and being in line for succession to handle their representation on behalf of the firm. Law firms should not have reason to think—as some have expressed—that clients are only interested in diversity data when they call upon their firms to provide such information in the context of an RFP or a related pitch for business.

Members of the advisory board identified several education strategies they use to facilitate important conversations with their outside counsel. Some law departments have formed diversity roundtables comprised of their internal lawyers and outside counsel to foster a dialogue and share best practices. Speakers and experts are brought in to provide advice and to generate ideas. One general counsel reported that the company conducts regular “diversity dialogues” with its outside law firms to review survey results, share ideas for joint collaborations, and institute opportunities for short-term secondments for diverse associates. These discussions create an environment to help both in-house and outside counsel enhance their initiatives.

The advisory board members also described informal education methods they use. One member reported on the company's participation in a panel with other in-house diverse lawyers at a law firm's annual training program

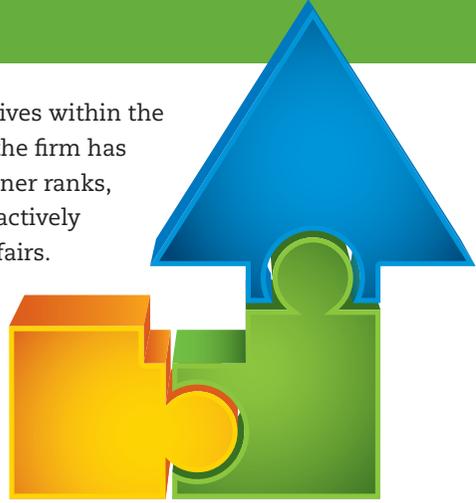
to emphasize the importance of diversity initiatives within the profession. Since participating in these panels, the firm has increased diversity within its associate and partner ranks, instituted an internal diversity committee, and actively participated in local law school diversity hiring fairs.

At the same time that diversity discussions with current outside counsel are taking place, corporate counsel have the opportunity to broaden the array of outside firms they may use. Today's law firms continue to experience high levels of attrition of talented lawyers, especially women lawyers and lawyers of color. The reasons are many, but certainly one factor has been the relative intransigence of most traditional firms to diversifying their upper echelons.

The marketplace for outside counsel offers more diversification—in the broadest sense of that word—than ever before. Many of the same lawyers who, a generation ago, might have moved in a rigid march from associate to partner, now leave to form their own firms. Just as the past decade has seen the formation of organizations to advance in-house women and minority lawyers (such as the Minority Corporate Counsel Association and Corporate Counsel Women of Color), so, too, have women-owned and minority-owned law firms greatly expanded in number and location across the country, as shown by the emergence of NAMWOLF (the National Association of Minority & Women Owned Law Firms) and other associations.⁹

As part of their diversity efforts, many large corporations have chosen to consider firms that are not on a company's traditional radar screen but that offer high-quality services and have built-in diversity, such as firms that are minority-owned or women-owned. A good example is the "inclusion initiative," in which corporations use their normal processes for selecting outside counsel—including such factors as cost, reputation, expertise, and referrals—and take additional measures to ensure that diverse law firms are among the pool of firms considered for work.¹⁰ Inside counsel often state that they hire "the lawyer not the firm," and women in mid-sized and smaller firms can provide the same level of service, judgment, and commitment as those in larger firms. Also, smaller firms tend to have less overhead and thus can offer more competitive billing rates to enable corporations to keep their legal expenses down.

Along the same lines, companies have the opportunity to team their traditional firm with a smaller, more innovative firm, especially on a major matter. A number of large corporations have paired a smaller diverse firm with their traditional provider of legal services, so the firms work together as a "virtual" firm. This arrangement has the benefit of diversifying providers of legal services without impinging too quickly or too intrusively into the culture of either firm that is hired.



2. The Client's Role in Developing Women Rainmakers

Clients have a remarkable opportunity to use their purchasing power to change the face of law firms and to encourage those firms that already provide diverse legal teams. By including women lawyers in the competition for their business—and making sure they are properly credited within their firms—corporate clients provide the opportunities that are foundational to career advancement for women at law firms.

In-house lawyers have much to consider when hiring outside counsel. Whether as lawyers for a corporation, government agency, or nonprofit organization, they have a special responsibility to their internal client. When a matter requires the hiring of outside counsel, the in-house lawyer is relied upon to use sound judgment, expertise, and legal relationships to select an attorney in private practice who can achieve the best result as economically as possible. There is little room for error. In a fiercely competitive business climate, the in-house lawyer is expected not only to achieve a great legal result, but also one that creates a competitive advantage for her client.

For the in-house lawyer looking to hire outside counsel, the path of least resistance is frequently to turn immediately to the “name” firm or one of a handful of known lawyers. But relying on what is often a non-diverse pool of individuals results in a narrow search and limited choices.

In-house counsel frequently report that they ask fellow in-house counsel for recommendations when searching for outside lawyers. But that process itself can be flawed. For example, do the other lawyers consulted have their own process for developing a “go-to” list? Is the inquiry casual or does the in-house counsel consult at least three to five colleagues for suggestions and understand the criteria on which the recommendations are based? Referrals should be sought in a systematic way to ensure they are an ongoing source of new information, and not simply a perpetuation of the same names.¹¹



Due diligence can offer tremendous opportunities for in-house counsel to expand the list of “go-to” lawyers. For example, in-house counsel can:

- » Ask for membership lists from specialty bar associations (such as a national association of product liability lawyers or of IP lawyers). By their entry criteria, many of these groups function as a screen for quality and experience. For bar associations targeting corporate clients, such lists are readily available to corporations.
- » Contact bar organizations whose members are composed of women lawyers or women-owned firms, and who may have referral systems. Some associations will act as anonymous clearinghouses, allowing corporate counsel to obtain credentials about a law firm or legal team in the first instance so counsel can decide whom they may want to contact.
- » Develop a simple system to track names of women attorneys in trial court opinions issued in the areas of expertise needed. The database can serve as the basis for compiling statistics of experienced and successful women lawyers that will greatly expand the pool of “go-to” lawyers.
- » Develop a list of other counsel within your industry who can act as sources of referrals. There are opportunities to meet and confer on industry initiatives. As part of those efforts, fostering a group of diverse lawyers respected by peers could certainly be a core initiative.
- » Invite diverse lawyers and firms to present a CLE program for the law department. This provides an opportunity to be introduced to the substance and style of the invited lawyers and at the same time provide the presenters with the opportunity to meet others in the organization who may be interested in diverse representation.
- » In meetings with peers from other companies, set aside time to invite women outside counsel and introduce them to other in-house colleagues. One group of women general counsel sponsors senior women lawyers whom they have retained as outside counsel and recommends them to others in the group.

These approaches are concrete ways that in-house counsel can promote women as potential “go-to” lawyers and champion their abilities, thereby advancing women lawyers who have earned the respect of their clients and peers and ensuring an expanding pool of qualified senior women outside counsel.

3. RFPs and Other Due Diligence Tools in the Hiring Process

RFPs and firm pitch meetings offer significant opportunities for clients to describe their own diversity policies to their outside service providers and to specify metrics by which they can better evaluate a firm's commitment to women lawyers. By asking firms who seek their business to disclose the percentage of women attorneys serving on the firm's management and compensation committees, a client demonstrates interest in learning how successful the firms have been in achieving diversity and inclusion at the leadership levels. Companies can cast a wide net in the RFP process, offering firms with alternative models an opportunity to showcase their skills.

RFPs and other due diligence procedures also allow in-house counsel to ensure that the "team" assigned by the firm will include women in leadership roles. If there is a presentation component to the RFP response, it can be telling if the law firm has failed to include a woman in that process. But even if women are included in the pitch, it is important that they also be involved in the work that may arise from the pitch team process. Too frequently, women may be involved in the initial effort to obtain the client's business but then will not be assigned any of the work. For example, in a survey of women partners, more than one-half of the respondents reported situations in which they had participated in a pitch but were not included in the client work that followed.¹²

In-house counsel can prevent this from happening by requiring that all pitch participants have a role in the client's work. In addition, the in-house lawyer can request that the firm designate a woman as lead relationship partner in the RFP response. Such a step can be key to a woman partner's receiving the necessary credit for business, which will benefit her compensation and contribute to her advancement in the partnership ranks.

When a firm is selected, some advisory board members require the engagement letter to specify the outside law firm's commitment to diversity.¹³ In-house counsel should hold their outside law firms accountable by specifically including women within the engagement letter's diversity commitment. It is also important that, if a firm is not selected in whole or in part due to its responses on diversity queries, in-house counsel should take the time to provide valuable feedback to those firms to help them develop stronger initiatives going forward. This feedback should specifically include identifying where firms can strengthen opportunities for women lawyers.

4. Benchmarking Outside Legal Providers

When in-house counsel ask their outside firms to provide data, they are demonstrating to law firms that they are paying attention to metrics and, by doing so, are able to benchmark the information against other firms. Advisory board members who shared their information-gathering practices with the Task Force reported that they undertake such data collection every six months to two years. In-house lawyers uniformly reported that benchmarking provides the opportunity to keep track of whether their outside lawyers are adhering to their commitments and improving upon their efforts.

Several advisory board members reported that they request identification by gender, race, ethnicity, or LGBT status of the origination, relationship, or billing partner, and the number of hours billed, the breakdown of lawyers on the compensation or executive committee or equivalent committees, as well as the breakdown of lawyers who lead practice groups. This information enables general counsel to truly hold their law firms accountable; as one in-house lawyer succinctly noted: “The real effectiveness to this survey comes in the follow-up.”

Some in-house lawyers issue “report cards” to firms, while others prefer a more informal approach, such as a discussion of the results. Another law department shares a summary of the results of the diversity reporting (on an anonymous basis) with all of its outside firms.

The Task Force recommends that monitored metrics include the gender composition of equity partners, non-equity partners, counsel, and associates.¹⁴ In addition, requested data should include the number of hours billed by



women and other minority lawyers on each of the company's matters and the number of women on management and compensation committees. It is also helpful to examine a law firm's associate retention rate, again analyzed by gender, race, ethnicity, and LGBT status. Other areas where metrics can be important are discussed in "Deepened Levels of Inquiry," below.

As always, ongoing communication with the outside firm is key to conveying that gender equity—as well as all diversity considerations—should be an integral part of the firm's decision-making process, and not just when a benchmarking survey is received. One advisory board law department pointedly stated that diversity and inclusion are "not a nice-to-have, but a requirement for success."

Where the benchmarking reveals a firm's failure to adhere to diversity commitments, some clients have taken the difficult step of severing a relationship with an existing legal service provider. This is an important action to take when progress is not made.

When firms show consistent progress, however, a client may want to consider the "carrot" approach, which rewards improvement. One innovative company implemented a system to do just that. In 2009, the company launched a program to encourage key outside counsel to increase the diversity in its firms through a strategy of "pay for performance" and collaboration. Some aspects of that program include:

- » A firm is eligible for a 2 percent bonus on all legal fees by achieving such criteria as, for example, a year-over-year increase of 2 percent in hours worked by diverse attorneys on the company's matters, or a .5 percent increase in the diversity of their attorney workforce; and
- » The program parameters and criteria are developed in partnership with law firm participants, with each held accountable for results.



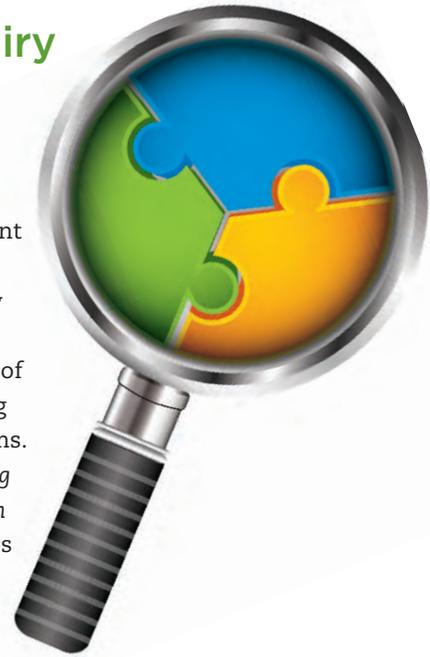
5. Deepened Levels of Inquiry

All of the above practices are important, but the greatest impact can derive from a deeper level of inquiry—when clients look to see how their work is credited within their law firms. The single most critical factor in a lawyer's success and advancement is to be fairly credited with and compensated for contributions to the client's selection of and loyalty to the firm. In most law firms, advancement and compensation are directly related to the allocation of credit for client revenues. The process for allocating that credit, however, varies significantly among firms.

The Task Force's companion publication, *Closing the Gap: A Road Map for Achieving Gender Pay Equity in Law Firm Partner Compensation*, details the challenges women face in the credit allocation process, and offers twelve detailed recommendations that law firms can implement to ensure that women receive fair credit for their contributions in originating and maintaining client relationships. But clients, too, have a critical role in promoting gender equity in the credit that is allocated by firms for their work.

When clients are willing to engage in sensitive conversations with law firms about these issues, clients reinforce their commitment to the success of women lawyers. One in-house counsel described a situation where a lawyer, based on his historic relationship with the client, continued to attend key account-management-related meetings and to be copied on related correspondence even though he no longer provided substantive legal services to the client. The client told the firm that he should be removed from the account, that he had no place in any meetings, and no reason to receive copies of correspondence. This resulted in the opportunity for the diverse partner who already managed the day-to-day legal work for the client to step up and manage all aspects of the client's account. Presumably, this resulted in a more equitable allocation of internal credit.

A general counsel similarly described her difficult conversation with an outside firm when she told them that she wanted the woman lawyer on whom she continually relied to be the relationship partner and to receive fee credit for the client's matters. This meant transferring that role from a senior partner who for a number of years had no involvement in legal work for the company. The subsequent transfer of credit was not without tension in the firm, but the client felt it properly reflected the client's reason for remaining with the law firm, as well as the important role played by the woman lawyer in maintaining the client's relationship with the firm.



An issue discussed in great detail in *Closing the Gap* is the way in which law firms transfer relationship or origination credits for particular clients to other lawyers within the firm when a long-time relationship or originating partner retires or otherwise leaves the firm. This generally happens informally and without client consultation; women and minority lawyers are often overlooked in these client succession decisions. There is a significant opportunity for clients to become involved, however, by informing their outside counsel that they want to participate in decisions regarding the transition of their work and the relationship partner status from a lawyer who is retiring or leaving the firm. One general counsel reported that the company is actively involved in discussions of succession with its law firms, noting that, while the company “and its firm may initially have different opinions about staffing and matter lead, ultimately the firm aligns with [the company’s] wishes.”

Clients may worry about whether such inquiries cross a line by becoming too involved in the internal decision-making processes of their outside counsel. They should be reassured by the words of one client who reported on how outside firms responded when the company asked how it could help support the firm’s diversity efforts: “The message we heard loud and clear is that it helps when we ask about it, it helps when we send emails.” The general counsel further reported that the company will congratulate the firm when, for example, a woman has been added to the management committee and will express concern when a woman has been replaced by a non-diverse partner.

Through these deeper levels of inquiry, in-house counsel are letting their firms know that these decisions matter to the client. By requesting the following information, clients will be informed as to the progress and opportunities for women in the law firms they engage:

- » The composition of the firms’ governing committees by gender, especially the management/executive committee and compensation committee.
- » Identification of work performed for the client by women and men, categorized by equity partners, non-equity partners, counsel, and associates.
- » Identification of the number of hours billed to the client by women and men, analyzed by equity partners, non-equity partners, counsel, and associates.
- » Percentage of women attorneys and men attorneys who lead practice groups or offices, analyzed at least by equity partners, non-equity partners, and counsel.
- » Description of the firm’s mentorship/sponsorship program for women attorneys.
- » Approaches taken to improve diversity in the legal profession or the presence of underrepresented groups in the firm and its leadership.

- » Identification of the percentage or number of women—compared to men—who receive origination or billing credit by matter, analyzed at least by equity partners, non-equity partners, and counsel.
- » Identification of the percentage or number of women—compared to men—who serve as the relationship partner to other firm clients, analyzed at least by equity partners, non-equity partners, and counsel.
- » Identification of women who have assumed a succession role for client matters (that is, who have previously inherited work), analyzed at least by equity partners, non-equity partners, and counsel.

6. Leading by Example

Clients should lead by example, both formally and informally. In-house lawyers can and should partner with their outside law firms to bring about pay equity. By working together and developing shared strategies, the long-standing gender disparities in compensation can finally be reduced and ultimately ended.

If in-house lawyers find that their own organization's leadership is slow to embrace these concepts, they can still underscore the value and need by taking a prominent and active role within their law departments, setting a standard for the rest of the organization. In-house lawyers can also challenge the outdated thinking of those who hold onto the mistaken belief that the highest caliber of lawyering and diversity are mutually exclusive concepts by promoting their many success stories and examples that prove otherwise. In-house lawyers are well-positioned to make the business case for gender equity and diversity and to demonstrate that innovative, creative, and efficient legal work will flow from those opportunities that help women flourish.

Conclusion

By using their substantial economic power to level the playing field for women at law firms, in-house counsel can play a key role in shattering the last vestiges of the glass ceiling in the legal profession while delivering successful results to their clients. We believe that the adoption by corporate law departments of the best practices and recommendations described above will redound to the benefit of clients, law firms, and women lawyers. When many companies take action to further the goal of advancing women in private practice, they will play a powerful role in moving the legal profession forward, allowing true gender equity to finally become a reality.

Checklist of Action Items to Advance Gender Diversity among Outside Counsel

A. Implement Structures within the Law Department.

A corporate law department should create the infrastructure to identify and implement policies to advance gender diversity. This can be accomplished in a variety of ways, including the following:

A diversity committee. This committee should be sponsored by the general counsel and be responsible for planning and executing diversity practices and policies, including diversity programming and initiatives. One important function of the diversity committee is to oversee diversity reporting by outside counsel (see benchmarking, below). The diversity committee can also support the law department's internal efforts relating to talent engagement and development.

Outside counsel guidelines. The guidelines should include the company's diversity expectations and state why diversity is important to the company. This is a short example of one company's articulation of the business case for diversity:

“The Law Department expects that your firm will provide opportunities to all employees at all levels within your firm, including women, minorities, individuals with disabilities, LGBT individuals, and covered veterans. We believe that a culturally sensitive workplace that fosters and capitalizes on diversity of perspective is better able to serve our needs and can produce better results.”

Support for internal efforts. A focus on outside law firms should complement internal diversity efforts. For example, the law department could appoint a supplier diversity champion both to identify non-law firm legal services providers and to counsel the procurement department on supplier diversity issues.

Support for diversity-related organizations. Support diversity-related efforts by bar organizations and groups with an established track record. The law department may pick one group to sponsor or support several outside groups. In addition to providing a forum to meet diverse talent, best practices continue to evolve, and engagement can provide insights and opportunities to advance a department's diversity goals.

B. Benchmark Outside Firms.

Many larger companies now require outside firms with significant billings to provide detailed diversity reporting (both quantitative and qualitative information) on an annual basis, for two purposes: (1) to ensure that outside firms understand that diversity is important to the company and (2) to assess outside counsel's performance against the law department's diversity goals. This annual process is typically directed by the law department's diversity committee. Benchmarking results in a written "diversity report" or "diversity scorecard" for discussion within the law department and with individual firms. The steps to take are as follows:

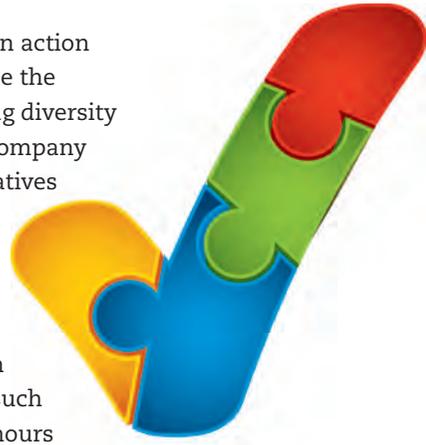


- Devise and implement a data collection process on an annual basis.** Suggested data is contained in the report.
- Give outside firms a "diversity report."** This summarizes the results of their annual data and shows how the firm's performance compares to the diversity standards set by the company.
- Hold an annual in-person meeting with each firm to discuss their report.** Topics may include the firm's policies and practices regarding advancement of women, the status of gender diversity on matters for the company, and the commitments the firm will make over the coming year to enhance gender diversity.
- Monitor the allocation of law firm credit for your company's work.** Have direct discussions with firms about which lawyers are the "relationship" partners, who receives credit for your company's billings, and how the firm is going to ensure that the diverse lawyers handling your company's matters receive appropriate recognition and compensation.
- Be prepared to take action if the firm's progress does not meet the company's standards.** As one global corporation put it, "It has been made clear to our firms which are not aligned with our commitment to diversity that future business will go elsewhere."

C. Communication and Incentives for Firms.

- Communicate the company's expectations about gender diversity.** The goal is to make clear that compliance with the company's diversity goals is a prerequisite to representing the company. Recite the company expectations in retention letters, RFPs, and outside counsel guidelines. One company has implemented a "core compact" for its outside counsel firms, which includes diversity as a key component, to create a mutual understanding and commitment of expectations between the law department and outside firms.
- Confirm gender diversity as matters are assigned.** Clients should make clear to their outside counsel that they do not expect to see all-male teams and that they do expect to see women in leadership roles.
 - Require that women lawyers be part of efforts to pitch new business and that all pitch participants have a role in the client's work.
 - Require that women be identified for the role of relationship partners. Consider requesting that the firm designate a woman as lead relationship partner on new business or current business.
 - Encourage firms to assign matters for the company to women who are working on a part-time or flex-time basis.
 - Make gender diversity a factor in every RFP process.
- Meet in an annual symposium with outside counsel to discuss gender-diversity ideas and policies.** As an example, one company holds an "annual diversity roundtable" to foster a diversity dialogue and encourage firms to share diversity best practices and ideas. Consider inviting external speakers and experts to provide advice and solutions concerning diversity-related issues.
- Give recognition to firms that meet the company's expectations for gender diversity.**
 - Attend programs on gender diversity that are held by your law firms, to show your support.
 - Send a letter or email to the chair or managing partner of a firm when you receive excellent service from a woman lawyer. Make sure that your satisfaction with her services is well-known to the leaders in her firm.

- One company gives a periodic “diversity in action award” to outside counsel firms that made the most significant contribution to advancing diversity and inclusion. As part of the award, the company hosts a dinner and allows firm representatives to introduce new lawyers and pitch new business to the law department.
- One company gives financial incentives for diversity staffing. For example, a firm would be eligible for a 2 percent bonus on all legal fees by meeting specific criteria such as a year-over-year specified increase in hours worked by diverse attorneys on the company’s matters, or a specified percentage increase in the diversity of its attorney workforce.



Collaborate on at least two gender-diversity programs with outside firms.

- Implement joint programs for mentoring activities.
- Foster mini-secondments of women lawyers. A short-term secondment (perhaps three to six months) may be partially funded by the company depending on the size of the firm involved.
- Offer specific advancement opportunities for women lawyers. These may include roles as lead counsel or as head of a major portion of a major matter, “shadow” opportunities with corporate counsel, special training, and speaking opportunities.
- Hold a diversity CLE Day at the company. One company uses such a program to spotlight five or six diverse attorneys (in their substantive practice areas) from its outside counsel firms. There is a mutual benefit: The law department receives substantive CLE credits, and the diverse attorney is provided with a business development opportunity.
- Identify and train talent in areas that meet the company’s needs. One company sponsors two “diverse trial counsel programs.” One program aims to identify diverse first-chair lawyers who do not work with the company and the other programs identify diverse junior lawyers at existing firms, for additional training and support. Another example is for the company to fund attendance of diverse lawyers at well-regarded trial training programs (such as NITA).

D. Develop a Roster of Gender-Diverse Outside Counsel.

Progress among all law firms has been slow, and many companies have found it worthwhile to advance gender diversity through a number of other avenues.

- Consider firms not on the company's traditional radar screen.** Women-owned law firms, for example, who are vetted for quality through membership in NAMWOLF, is one approach. By way of introduction, you may invite women lawyers and gender-diverse firms to present a CLE for the law department.
- Implement a spend set-aside for women-owned firms.** Some companies, for example, set aside up to 20 percent of their outside legal spend for women- and minority-owned firms.
- Team a diverse firm with one of the company's large firms.** A number of large corporations have paired a smaller diverse firm with their pre-existing providers of legal services, which has the benefit of diversifying providers of legal services without intruding into the culture of either firm.
- Ask for membership lists from specialty bar associations.** By their entry criteria, some of the invitation-only bar groups function as a screen for quality and experience. For bar associations targeting corporate clients, such lists are readily available to corporations.
- Contact bar organizations whose members are composed of women lawyers or women-owned firms, and who may have referral systems.** Some associations will act as anonymous clearinghouses, allowing corporate counsel to obtain credentials about a law firm or legal team so counsel can decide whom they may want to contact.
- Develop a list of other in-house counsel within your industry who can act as sources of referrals.** There are opportunities to meet and confer on industry initiatives. As one example, one group of women general counsel regularly invites senior women lawyers whom they have retained as outside counsel and recommends them to others in the group.

Endnotes

1. The other publications of the Task Force are (1) *Closing the Gap: A Road Map for Achieving Gender Pay Equity in Law Firm Partner Compensation (Closing the Gap)*, which provides a detailed analysis of the pervasive and long-standing gender gap in compensation and sets forth specific recommendations for law firms; (2) *The ABA Toolkit for Gender Equity in Partner Compensation*, which includes a “conference in a box” to assist bar associations and others in presenting programs about the compensation gap between men and women lawyers and suggested solutions; and (3) *What You Need to Know About Negotiating Compensation*, a guide offering expert advice that women practitioners can use to negotiate their own compensation, including specific strategies and techniques to better navigate a firm’s compensation system.

2. Extensive data on the gender gap in compensation are detailed in *Closing the Gap*, *supra*, note 1. An example of research detailing the gender gap in achieving equity partner status can be found in the annual national *Survey on Retention and Promotion of Women in Law Firms*, produced by the National Association of Women Lawyers and the NAWL Foundation. For example, the survey, released in October 2012, reported that women barely comprise 15 percent of the equity partners of the nation’s largest law firms, a figure that has shown almost no change for years. The NAWL survey further reported that women comprise only 20 percent of the positions on the highest governance committees of the largest firms, demonstrating a continued lack of progress in the attainment of leadership positions.

3. American Bar Association, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/1947_2010_enrollment_by_gender.pdf

4. The National Association of Women Lawyers and the NAWL Foundation, *Seventh Annual National Survey on Retention and Promotion of Women in Law Firms*, 4 (2012).

5. *See, for example*, The National Association of Women Lawyers and the NAWL Foundation, *Third Annual National Survey on Retention and Promotion of Women in Law Firms*, 4 (2008).

6. <http://www.americanbar.org/content/dam/aba/migrated/women/womenstatistics/1988ReportToHouseOfDelegates.pdf>

7. The National Association of Women Lawyers & the NAWL Foundation, *supra*, note 4 at 15-18.

8. Joan C. Williams, the Project for Attorney Retention and Veta T. Richardson, the Minority Corporate Counsel Association, *New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women*, 65 (2010).

9. The ABA Commission on Women in the Profession has captured the compelling stories of many women who created their own law firms in the ABA publication, *The Road to Independence: 101 Women’s Journeys to Starting Their Own Law Firms* (2011).

10. *See, e.g.*, http://c.ymcdn.com/sites/www.namwolf.org/resource/resmgr/docs/inclusion_initiative.pdf.

11. *See, e.g.*, Lauren Stiller Rikleen, *Female In-House Counsel Can Wield Economic Power To Level Playing Field In Hiring Outside Lawyers*, *New England In-House* (January 1, 2004), <http://newenglandinhouse.com/2004/01/01/female-inhouse-counsel-can-wield-economic-power-to-level-playing-field-in-hiring-outside-lawyers/>

12. Williams & Richardson, *supra*, note 8 at 43.

13. One corporation includes the following diversity statement in its engagement letter: “We expect that you share our commitment to diversity and inclusiveness. [We] believe that firms with more diverse and inclusive representation generate more innovative service, advice and solutions, and work better with our legal teams and business partners. In addition, diversity and inclusion align with our values and the needs of our business. As a result, we have publicly pledged to make law firm hiring decisions based in part on the diversity performance of the firms. Thus, we expect that you will openly and actively engage us in discussions of your firm’s commitment to diversity and inclusion, and comply with any periodic requests from us on your progress.”

14. Of course, other diversity metrics should be monitored as well; for example: race/national origin, LGBT status, and disability status.

About the Author

Lauren Stiller Rikleen is a nationally recognized speaker and trainer. As president of the Rikleen Institute for Strategic Leadership, she provides interactive workshops, keynote speeches, and customized consulting on women's leadership and advancement; removing unconscious bias from the assignment and evaluation process; and strengthening intergenerational teams.

Ms. Rikleen is also the Executive-in-Residence at the Boston College Center for Work & Family in the Carroll School of Management. The center links academic research and corporate practice to create workplace cultures that support individual and organizational success.

The author of *Ending the Gauntlet: Removing Barriers to Women's Success in the Law* and *Success Strategies for Women Lawyers*, Ms. Rikleen is currently writing a book about millennials in the workplace, which is scheduled to be published in March 2014.

She is the recipient of numerous awards, including: Friend of the Division Award from the Law Student Division of the American Bar Association, Leading Women Award from the Girl Scouts of Eastern Massachusetts, *Massachusetts Lawyers Weekly* Women of Justice Award, Boston College Alumni Award for Excellence in Law, the Lelia J. Robinson Award from the Women's Bar Association of Massachusetts, and the Athena Award from the MetroWest Chamber of Commerce.

A former law firm equity partner, Ms. Rikleen was selected by her peers to be listed in Best Lawyers in America (for twenty years), Chambers USA America's Leading Business Lawyers, and Massachusetts Super Lawyers.

She has a distinguished record of active engagement in community and professional organizations. She holds several leadership positions within the American Bar Association, including serving as a member of the Presidential Task Force on Gender Equity. She has also served as a past president of the Boston Bar Association, as a member of the ABA Board of Governors, and as a member of the ABA Commission on Women in the Profession. Ms. Rikleen is also a trustee of the Boston Bar Foundation, a trustee of the Middlesex Savings Bank, and a member of the Board of Directors of the Massachusetts Women's Political Caucus.

She has written for or been interviewed by numerous national publications and media outlets, including: MSNBC, The Harvard Business Review Blog Network, the *Washington Post*, the *Boston Globe*, the *New York Times*, the *Boston Herald*, Fox News, New England Cable Network Television, the *National Law Journal*, *Forbes Woman*, the *Careerist*, MSNBC.com, the *Boston Business Journal*, *Law 360*, *New York Lawyer*, and the Glass Hammer.

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The *National Law Journal* named Ms. Liebenberg as one of its “50 Most Influential Women Lawyers in America.” She has been named several times as one of the “Top Ten Super Lawyers in Pennsylvania,” and is the only woman in Pennsylvania to receive this designation.

Ms. Liebenberg has held leadership roles in numerous organizations focused on the advancement of women in the legal profession and played a key leadership role in countless national initiatives. She now serves as chair of the ABA Task Force on Gender Equity. From 2008–2011, she served as chair of the ABA Commission on Women in the Profession, whose first chair was Hillary Rodham Clinton.

Ms. Liebenberg currently serves as Leader-in-Residence at the Center for Women in Law and was the chair of the summit in 2011. She founded and is chair of DirectWomen, an ABA initiative to enable women lawyers to prepare for service as directors on corporate boards. In addition, Ms. Liebenberg serves as a visionary delegate and vice chair for Vision 2020, a national organization dedicated to achieving gender equality by the 100th anniversary of the Equal Rights Amendment in 2020. She was chair of the Pennsylvania Bar Association’s Commission on Women in the Profession and also served as co-chair of the Philadelphia Bar Association’s Women in the Profession Committee. Ms. Liebenberg was appointed by the Pennsylvania Supreme Court to the Interbranch Commission for Gender, Racial, and Ethnic Fairness, and now serves as its co-chair. Previously, she was appointed by the Pennsylvania Supreme Court to its Committee on Racial and Gender Bias in the Justice System, where she was co-chair of the Gender Bias Committee.

Stephanie A. Scharf is a founding partner of Scharf Banks Marmor LLC, a boutique Chicago firm that provides legal services to US and global businesses. The firm is one of the largest women-owned law firms in Chicago and the Midwest.

Ms. Scharf represents companies in product liability and mass tort litigation, consumer fraud, insurance coverage, and contract disputes. A member of the Illinois and New York bars, she has tried cases in federal and state courts in many jurisdictions. Ms. Scharf is especially adept at presenting complex technical matters to juries and judges. She is a prolific writer, with such publications as the PLI treatise, *Product Liability Litigation* (lead editor and chapter author), and ABA monographs on Epidemiology and Toxicology (editor and chapter author). Before practicing law, she conducted national survey and statistical research in her role as Senior Study Director, NORC. Ms. Scharf received her J.D. from the University of Chicago in 1985 and a Ph.D. (Behavioral Sciences/Psychology) in 1978.

Long active in the legal community on issues concerning the advancement of women in the law, Ms. Scharf is a commissioner of the American Bar Association’s Commission on Women in the Profession and also a member of the ABA Presidential Task Force on Gender Equity. She is a former president of the National Association of Women Lawyers and of the NAWL Foundation. She founded the NAWL Annual Survey of Retention and Promotion of Women in Law Firms and the National Survey of Women’s Initiatives in Law Firms.

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About the ABA Presidential Task Force on Gender Equity

In August 2012, American Bar Association President Laurel G. Bellows appointed a blue-ribbon Task Force on Gender Equity to recommend solutions for eliminating gender bias in the legal profession.

The Task Force has produced several publications addressing pay equity:

- Closing the Gap: A Road Map for Achieving Gender Pay Equity in Law Firm Partner Compensation;
- Power of the Purse: How General Counsel Can Impact Pay Equity for Women Lawyers;
- Toolkit for Gender Equity in Partner Compensation; and
- What You Need to Know about Negotiating Compensation.

The Task Force also has implemented numerous projects to achieve gender equity, including:

- The Midwest Regional Summit for Women In-House Counsel was held in March 2013, in Chicago.
- ABA women's affinity groups are addressing ways for these groups to leverage their collective power and maximize coordination.
- Young lawyers are utilizing social media to engage young women and men in the conversation about gender equity.
- In conjunction with the Section of International Law, the Task Force created a women-to-women business referral network with various women bar leaders and lawyers from international bar associations.

For more information on the Task Force on Gender Equity, visit its website at www.americanbar.org/GenderEquity.

About the ABA Commission on Women in the Profession

As a national voice for women lawyers, the ABA Commission on Women in the Profession forges a new and better profession that ensures that women have equal opportunities for professional growth and advancement commensurate with their male counterparts. It was created in 1987 to assess the status of women in the legal profession and to identify barriers to their advancement. Hillary Rodham Clinton, the first chair of the Commission, issued a groundbreaking report in 1988 showing that women lawyers were not advancing at a satisfactory rate.

Now in its third decade, the Commission not only reports the challenges that women lawyers face, it also brings about positive change in the legal workplace through such efforts as its Women of Color Research Initiative, Women in Law Leadership Academy, women in-house counsel regional summits, and Margaret Brent Women Lawyers of Achievement Awards. Drawing upon the expertise and diverse backgrounds of its twelve members, who are appointed by the ABA president, the Commission develops programs, policies, and publications to advance and assist women in public and private practice, the judiciary, and academia. For more information, visit www.americanbar.org/women.



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