WLN Workshop: The Courage to Speak Your Mind and Ask for What You Want

APA women face unique challenges when it comes to speaking up, owning their own accomplishments, and advocating or negotiating for themselves in the workplace. The 2019 Workshop will focus on helping attendees negotiate effectively using strategies that are backed by research and feel comfortable as an APA woman, and empower attendees ask for what they want—whether it’s a raise, promotion, new role, or new assignment. We will discuss how to maximize bargaining power, develop the best strategy for your “ask,” and manage the reactions and emotions that may arise.

Session 1 | How Women Should Negotiate for Themselves (1:30pm-2:15pm)

Gain insights about why women do not often talk about their successes and accomplishments, why they don’t ask for choice projects, promotions other advancement opportunities, and why women are less likely to negotiate their offers, salaries or other terms of employment. Professor Raji Srinivasan, Associate Dean for Diversity and Inclusion and Sam Barshop Professor of Marketing Administration at the Red McCombs School of Business, University of Texas at Austin, will present this topic and related research, and discuss how APA women can overcome these challenges through self-advocacy and utilize negotiation skills to ask for leadership and advancement opportunities.

Speaker:
Raji Srinivasan, Associate Dean for Diversity and Inclusion and Sam Barshop Professor of Marketing Administration at the Red McCombs School of Business, University of Texas at Austin

Session 2 | How Speaking Up Can Lead to Success: A Panel Discussion (2:15pm-3:15pm)

Successful APA women attorneys will discuss the importance of self-advocacy in their career progression, the challenges they have faced, and the successes they have experienced because they effectively advocated and negotiated for themselves at key moments in their careers. Panelists include Linda Shih, Associate General Counsel for Vanguard Innovation Studio (former General Counsel for RedSparks), Manita Rawat, managing partner of the Palo Alto office of Duane Morris, and The Honorable Hope Thai Cannon, Magistrate Judge for the U.S. District Court for the Northern District of Florida.
Session 3 | Practice Scenarios and Workshop (3:30pm-4:15pm)

Attendees will break into smaller groups to work through hands-on scenarios and practice ways to overcome fear and increase confidence to better handle difficult or uncomfortable situations, to advocate for themselves, ask for work and career opportunities, and empower themselves in ways that can lead to future advancement and success.

CLE Materials:

- Research / science behind why gender gap in negotiation for ones own benefit
  - Women less likely to ask then men, sometimes you only get what you ask for
    - Asking for the Salary You Deserve: Harvard Study on Salary Negotiations
      - [http://gap.hks.harvard.edu/do-women-avoid-salary-negotiations-evidence-large-scale-natural-field-experiment](http://gap.hks.harvard.edu/do-women-avoid-salary-negotiations-evidence-large-scale-natural-field-experiment)
    - This study shows that gender differences in salary negotiations. The study analyzed data gathered from job seekers responding to various types of job postings.
      - 2/3 of the 2422 total job seekers partaking in the study were women. The study found that women were overall less likely to apply to the advertised jobs than men. (33% women; 44% men responded to the job posts)
      - If job posting did not explicitly state whether wages were negotiable, men were more likely to negotiate than women.
      - If the job posting did explicitly state that wages were negotiable, both genders were equally likely to negotiate.

- Why Women Don’t Ask:
  - Harvard Article: [https://hbrascend.org/topics/why-women-dont-negotiate-their-job-offers/](https://hbrascend.org/topics/why-women-dont-negotiate-their-job-offers/) The social cost for negotiating for higher pay is greater for women than for men.
  - NPR Article: [https://www.npr.org/2011/02/14/133599768/ask-for-a-raise-most-women-hesitate](https://www.npr.org/2011/02/14/133599768/ask-for-a-raise-most-women-hesitate) In a study where women and men were shown asking for a raise following the same script, people liked the man, but perceived the woman to be “way to aggressive” and “too demanding.” The study suggests that women face more backlash from society than men.
Women fearful of being viewed negatively / as aggressive for speaking up

- See NPR Article above: women are perceived as too aggressive.
- Forbes Article: https://www.forbes.com/sites/forbescoachescouncil/2017/07/13/why-dont-more-women-negotiate/#3e8a0c0be769 “For women, negotiation is seen as an improper act of appearing “greedy” or desperate”; Women are also more afraid to ask.

- What are the consequences for women when they do not speak up for themselves?
  - Gender pay gap issues
    - 3 Long Term Effects the Gender Pay Gap has on Women: https://www.mic.com/articles/188833/3-long-term-effects-the-gender-pay-gap-has-on-women#.1jbSlvfwi
      - Institute for Women’s Policy Research: Economic Stability
        - Failure to pay women equally limits their ability to attain economic stability. Research shows if women were paid the same as men, the poverty rate among working women would decrease from 8% to 3.8%.
        - Of the 5.6M children of women in poverty, 2.5M would come out of poverty.
      - American Association of University Women: Student Loans
        - Full time working women graduating college in 07-08 had paid off 33% of their student loan debt by 2012, but men in the same position paid off 44%.
      - UBS Wealth Management: Retirement / Lifetime Income
        - According to UBS’s research, by the time a female reaches 85, taking into account of days off of work she would take to care for children or elderly, and other life challenges, the female made 43% less than the male. When these life challenge factors were removed, the female still made 38% less than the male by age 85.
        - Less likely to succeed in legal environment, seen as weak or lacking executive presence which takes into account confidence over competence

- What can women do to overcome these challenges
  - Speaking up in different situations, including uncomfortable situations
  - How to be true to yourself / your nature and still make the ask
  - Utilizing emotional intelligence to your advantage
  - Conversations around pay, equity, and asking for choice assignments

- See ABA Negotiating For Better Compensation Videos and Materials
  - https://www.americanbar.org/groups/diversity/women/initiatives_awards/gender-equity/negotiation/ – they are useful in providing strategies to find out what is fair compensation, how to prepare, and how to handle a negotiating discussion.
    - There are videos discussing how women can negotiate, presented by a former ABA president. Note: negotiating is not just about compensation but about work development opportunities, benefits, etc.
- Article – What you Need to Know About Negotiating Compensation
  [https://www.americanbar.org/content/dam/aba/administrative/women/negotiations_guide_task_force.pdf](https://www.americanbar.org/content/dam/aba/administrative/women/negotiations_guide_task_force.pdf)

- ABA Gender Equity Task Force – Article “Closing the Gap”
  [https://www.americanbar.org/content/dam/aba/administrative/women/closing_the_gap.pdf](https://www.americanbar.org/content/dam/aba/administrative/women/closing_the_gap.pdf)
  - Gender pay gap is not just because of the greater family responsibilities that women generally undertake, but implicit bias is also significant in why there is gender pay gap
  - Chapter 5 (p42) provides detailed recommendations for Law Firms in how to close the gender pay gap. There are 12 recommendations, which include a checklist of what firms should do, and the benefits of implementing the recommended procedures

- ABA Gender Equity Task Force – Article “Power of the Purse”
  [https://www.americanbar.org/content/dam/aba/administrative/women/power_of_purse.pdf](https://www.americanbar.org/content/dam/aba/administrative/women/power_of_purse.pdf)

- NPR Article above: The NPR Article discusses a Harvard researcher testing various strategies that helped women find a way to ask for more while avoiding the backlash. These suggestions include:
  - Justifying the request by saying the team leader thought they should ask for a raise
  - Convince the boss that the negotiating skills are good for the company
  - Appear friendly, warm and concerned for others above yourself

- Harvard Article above (“Relational Account”):
  - “Relational Account”; “Think Personally, Act Communally” – Sheryl Sandberg; “I-We” Strategy:
    - This involves asking for what you want while signaling to your negotiating counterpart that you are taking their perspective into account
    - First, explain why, in their eyes, it is legitimate to negotiate.
    - Second, signal that you care about organizational relationships. Indicate that you and the other person are on the same team.
      - For example, the article suggests that a Junior Employee can say: “I don’t know how typical it is for people at my level to negotiate, but I’m hopeful you’ll see my skill at negotiating as something important I can bring to the job.”

- Forbes Article above:
  - Do not take rejection personally. There could be budget issues and maybe your request will not be honored the first time. Remain optimistic and improve your argument.
- Negotiate for more than just money. Ask for new roles/responsibilities to utilize your skills. The key to increase compensation is by negotiating to take initiative to lead a department project, which will substantiate your argument.
- Always know your value. Discuss why you are an invaluable asset and leader, not just employee.
- Connect with other women. Join or create a resource group to share experiences and discuss solutions.
Self-Advocacy—speaking or acting on our own behalf—is an increasingly important skill (for a primer on how to do it, see reference 1) and one that makes many of us cringe. Just look at the new National Institutes of Health biosketch: Instead of modestly providing a list of publications, we need to clearly and cogently champion our multiple accomplishments. (The biosketch is also very useful to people who write nomination or recommendation letters for you.)

I’m not speaking about braggadocio; I mean acting on our own behalf with the same persuasive power we use on behalf of others. And that is hard, especially for women, to do.

**Gender Stereotypes in Negotiations**

One classic example of a situation in which women have a harder time with self-advocacy than men do is the job negotiation. Janoff-Burnham and Wade tell the following true story about two assistant professors hired at the same time, one a man and the other a woman. They “have equivalent research records, letters of recommendation, and teaching experience; in fact, they are essentially...”
indistinguishable on paper. Yet, the man's starting salary is considerably higher than the woman's. A male administrator further up the bureaucratic hierarchy notices this discrepancy and discusses the cases with the relevant department chairs and dean. He learns that the new assistant professors were offered the same starting salary. The woman accepted, but the man negotiated and consequently was paid more.” The high-level administrator was satisfied by this explanation and the discrepancy in salaries remained. The man was rewarded for his ability to self-advocate. Whether this is “fair” depends on whether the difficulty and potential risks of self-advocacy are equal across gender, and psychological research suggests that the playing field is perniciously uneven.

First, “gender stereotypes” impel different societal expectations for behavior. As reviewed by Janoff-Bulman and Wade, men “are expected to be ambitious,... assertive, self-confident, direct, and instrumentally competent,” while women “are expected to be unselfish, caring,...emotionally expressive, and interpersonally sensitive.”2 In other words, the expectation already exists that men will self-advocate and women will be modest.

**Just Act Differently?**

Well, you say, so what? All women need to do is act differently and they will get a different reaction—right?

Unfortunately, no. Psychological research shows costs associated with resisting gender stereotypes. First, perceptions of “out of role” behavior are exaggerated. In other words, a self-advocating argument made by a woman will be seen as more self-promoting, even aggrandizing, than the same argument made by a man (reviewed in reference 2). Second, the social cost of resisting gender stereotypes is being liked less by both men and women. As documented by Powers and Zuroff, self-promoting women tend to be evaluated higher in performance yet lower in likeability than those who are not self-promoting.3

This matters even from a professional perspective because being liked is a powerful tool of persuasion: People want to say yes to those they like.4 So, as a woman, what can you do? In a culture that insists on self-advocacy and then slams you for it, it's like there's no way to win.

**Self-Advocacy and Other-Advocacy**
There is a way forward, a collective way: Women are amazing advocates for others. As Smith and Huntoon relate, when they were putting together a magazine featuring the achievements of women faculty on campus, they put out a "call for women to share their successes." No replies. Except they received "many replies from people telling us about other women we should feature and the good work that these other women on campus were doing." This fits well with our gendered modesty norm and research showing women are more comfortable promoting others.

Further, not only are women evaluated more harshly for promoting themselves than they are for promoting others, they actually tend to be less motivated in promoting themselves compared with promoting others; self-promotion goes against our gender stereotype and causes discomfort, termed "situational arousal." Other studies of situational arousal suggest that if individuals (mistakenly) assign their discomfort to an external source (a misattribution), then they will no longer change their behavior in response to the discomfort. So what then would happen if, during the self-promotion task, researchers offered participants an opportunity to misattribute their discomfort?

In this experiment, participants were told that the department was investigating the effect of extraneous distraction on task performance. One group was introduced to a "black box subliminal noise generator" and told it caused side effects such as "increased heart rate, nervousness, and arousal," thereby providing participants with an alternate, external source to which they could attribute any discomfort actually caused by their self-promotion. The black box didn't do anything; it was simply something to "blame" if participants began to feel uncomfortable. The other group was told nothing about the black box (which was in the room for both groups). Strikingly, the participants who could blame the black box did as well at self-promotion as at peer-promotion. They also reported that they were more interested in the task and more motivated to do it.

To summarize where we are:

1. Women are expected to be more modest than men and not self-advocate.
2. Women who do self-advocate are less likely to be liked, and their self-advocacy will be seen as excessive compared with the same self-advocacy by men.
3. Women are great at advocating for others and are expected to do so.
4. Women feel uncomfortable, uninterested, and unmotivated in tasks that require self-advocacy and don't perform as well as a result.

https://www.ascb.org/careers/self-advocacy-why-its-uncomfortable-especially-for-women-a...
5. Creating an opportunity to misattribute their discomfort is sufficient to increase interest, motivation, and performance.

**Self-Advocacy IS Other-Advocacy**

How might we use this information to advance our careers? Here are a few suggestions:

1. Don’t go it alone: Turn self-advocacy into other-advocacy whenever possible. Ask others to advocate for you (including nominating you for awards) in situations where it is appropriate. WICB members have worked tirelessly to promote women as keynote speakers at national meetings, as award recipients, and as leaders.

2. In cases when you do need to advocate for yourself, think about whether you can make it also a case for something larger, for example for your research group. When it is solely about you (as it will be from time to time), ask your peers to help you craft an effective case. What would they say about you? Use their words, and resist the urge to tone them down.

3. Know that your discomfort at self-advocacy is caused by the gender stereotype itself. It is indeed something outside yourself and is shared by members of our community, including you. In other cases of stereotype threat, this kind of knowledge aids performance (for example, by girls on math tests).

4. Get a black box! More seriously, the misattribution experiment tells us that it is not the discomfort itself that leads to low interest, motivation, and performance, but rather the story we tell ourselves about the discomfort. Learn to tell a different story about “situational arousal,” or no story at all. Mindfulness practices teach you to name sensations as a way of “taming” them.

5. Administrators need to think carefully about tasks designed to require self-advocacy. Instead of asking candidates to promote themselves, we could rely more heavily on advocacy by others, including reaching out to people to nominate their peers for recognition of various kinds. Consider going gender-blind whenever possible. Furthermore, administrators should work with young investigators to help them build their negotiation styles and strategies. And they must make it incumbent on themselves to fix disparities that exist as a result of the gendered differences in both behavior and perception of behavior. None of these suggestions is trivial, but they are worth the effort.

To provide you more clarity about how we collect, store and use personal information, and your rights to control that information, we have updated our privacy policy, which also explains how we use cookies. You consent to our cookies if you continue to use our website.
well, and for generations to come. Advocating for yourself—worthwhile in itself—is still advocating for others.

References


About the Author:

Massachusetts Institute of Technology
Do Women Avoid Salary Negotiations? Evidence from a Large Scale Natural Field Experiment
Authors: Andreas Leibbrandt, John A List

When an employer clearly states that employees can negotiate their salaries, the gender gap in job applications and negotiation closes.

FINDINGS

The gender wage gap persists, as men are still paid more than women, even when taking into consideration job level, differences in preferences, and family leave. Gender differences in salary negotiations may also be an important determinant of existing gender differences in labor market outcomes. Over the past two decades, laboratory and survey evidence has suggested that men are significantly more likely to engage in salary negotiations than women. However, when women negotiate on behalf of another person they are as successful as men. To test how workplaces with negotiable salaries affect applicant sorting and the likelihood of starting negotiations, the authors of this study designed a randomized control trial of nearly 2,500 job seekers. After receiving inquiries about positions posted on online job-boards, researchers altered whether the negotiability of wages was explicitly stated. Using data from applicants, the authors were able to detect both the nature of sorting and the extent of differential salary negotiations by gender.

Findings

Both the type of task associated with the job advertised (gender-neutral vs. masculine tasks) and whether or not employers explicitly stated that salaries were negotiable affected job applications by gender.
The sample was overwhelmingly female, as about two-thirds of the job seekers were women. However, after inquiring for the position, women were overall less likely (33%) to apply to the advertised jobs than were men (44%).

Applications also varied by gender depending on the type of task associated with the job. For the job ad with the gender-neutral job task, 79% of the applicants were female, whereas for the job ad associated to the masculine task, only 55% were female.

The gender gap in job applications was much more pronounced for jobs that left the negotiation of wage ambiguous. This result is mainly driven by men’s preference for job environments where the negotiation of initial wage is ambiguous. Simply by including the fact that the wage was “negotiable” in the job advertisement, the gender gap in job applications was reduced by approximately 45%.

Willingness to negotiate varied by whether it was explicitly stated that wages were negotiable. Wage negotiations were initiated almost three times more often by those who received job descriptions that mentioned wages were negotiable (21%) compared to those who received job descriptions that did not mention it (7%).

Gender differences in negotiation were also dependent on whether there was an explicit statement that wages were negotiable. The authors found that when there was no explicit statement that wages are negotiable, men were more likely to negotiate than women.

However, when the job description explicitly mentioned that wages were negotiable, this difference disappeared and seemed to reverse. In this scenario, both genders were equally likely to initiate negotiations (women at 21.2% and men at 21.4%) and equally hesitant to offer working for lower wages (women at 6.2% and men at 6.0%).

The overall findings indicate that explicitly stating that salaries are negotiable closes the gender gap in job applications, as men prefer jobs where the possibility of negotiating wage is ambiguous. This work environment in which wages are clearly negotiable also exhibits women and men negotiating at the same rate. Both of these findings suggest that simply being clear about the fact that wages are negotiable could help close pay gaps.

Methodology
The study was conducted as a randomized control trial involving 2,422 job seekers that responded to an advertisement the authors published in 18 Internet job boards across nine major cities in the U.S. Two-thirds of individuals who inquired after the jobs were women. The authors employed a 2x2 experimental structure that varied (1) the negotiability of wages (no information vs. explicit information that wages were negotiable) and (2) the employment advertisement (general vs. sports-related job task). This 2x2 design took place in two stages.

In the first stage, the authors advertised the position without reference to whether initial wages could be negotiated. There were two treatments – or two different advertisement types – at this stage of the study. One ad was for a “general” (or gender-neutral) version of the job and the other for a more “masculine” version. In the second stage, job seekers who expressed interest in the position were randomized into one of two wage description environments, i.e. ambiguity around wage negotiation or explicitly stating that wages could be negotiated.

Finally, to actually apply for the job, the job seeker had to fill out an interview questionnaire. Researchers measured how many questionnaires were returned, and classified the job applicants’ responses into three categories: (1) signaled willingness to work for a lower wage than advertised, (2) did not signal willingness to work for a lower wage but did also not negotiate for a higher wage and (3) negotiated for a higher wage. Gender of applicants was determined through their names. Ten applicants were actually hired.


Research shows that women are more reticent than men to negotiate their salary offers. For instance, one study of graduating MBA students found that half of the men had negotiated their job offers as compared to only one eighth of the women. This general pattern has been replicated in survey studies of working adults and in laboratory experiments. It begs the question: Why? Is this a “confidence” problem? Is negotiation a skill for which men are simply better socialized than women? Why leave money on the table?

Researchers have examined the why, and the answer has more to do with how women are treated when they negotiate than it has to do with their general confidence or skills at negotiation. Numerous studies have been conducted in which participants rate their impressions of employees who negotiate for pay and of employees who let the same opportunity to negotiate pass them by. The researchers then compared people’s willingness to work with that employee after evaluators saw him or her negotiate, or not. If evaluators were less inclined to work with the same employee after seeing him or negotiate, we deemed that the “social cost” of negotiation.

In repeated studies, the social cost of negotiating for higher pay has been found to be greater for women than it is for men. Men can certainly overplay their hand and alienate negotiating
counterparts. However, in most published studies, the social cost of negotiating for pay is not significant for men, while it is significant for women.

The results of this research are important to understand before one criticizes a woman — or a woman criticizes herself — for being reluctant to negotiate for more pay. Their reticence is based on an accurate read of the social environment. Women get a nervous feeling about negotiating for higher pay because they are intuiting — correctly — that self-advocating for higher pay would present a socially difficult situation for them — more so than for men.

But here’s a twist: we love it when women negotiate assertively for others. It’s just when women are negotiating assertively for themselves — particularly around pay — where we find a backlash. Unsurprisingly, research also shows that women perform better (e.g., negotiate higher salaries) when their role is to advocate for others as opposed to negotiating for more for themselves. Men’s behavior and the ensuing social effects don’t shift much depending on whether they are advocating for themselves or others.

OK. So, we shouldn’t blame women for being more reticent than men to negotiate for higher pay. But, is there anything that women can do about it? Thankfully, yes.

The answer is to use a “relational account” — or what I have learned from Sheryl Sandberg to call a “think personally, act communally” strategy. Using a “relational account” or “I-We” strategy involves asking for what you want while signaling to your negotiating counterpart that you are also taking their perspective. So, how does it work?

First, you want to explain to your negotiating counterpart why — in their eyes — it’s legitimate for you to be negotiating (i.e., appropriate or justified under the circumstances). Sheryl says that in her negotiations with Facebook, she told them, “Of course you realize that you’re hiring me to run your deal team so you want me to be a good negotiator.” Sandberg wanted Facebook to see her negotiating as legitimate because, if she didn’t negotiate, they should be worried about whether they’d made the right hire.
Second, you want to signal to your negotiating counterpart that you care about organizational relationships. After pointing out that they should want her to be a good negotiator, Sheryl recounts saying, “This is the only time you and I will ever be on opposite sides of the table.” In other words, “I am clear that we’re on the same team here.”

In experimental research testing evaluators’ impressions of alternative negotiating scripts, we found that relational accounts helped women both get what they wanted and make the impression that they wanted to make. For instance, one successful relational account that we tested was very similar to Sheryl’s, but was written for a more junior employee: “I don’t know how typical it is for people at my level to negotiate, but I’m hopeful that you’ll see my skill at negotiating as something important that I can bring to the job.” Note that I’m not suggesting that women use these scripts word-for-word. Come up with an “I-We strategy” that makes sense in context and feels authentic to you.

When the explanation for why the woman was negotiating seemed legitimate, people were more inclined to grant her compensation request (as compared to when she was simply negotiating for a higher salary without that explanation). When her script communicated concern for organizational relationships, evaluators were more inclined to work with her. Indeed, there was no significant difference in the willingness to work with a female employee who negotiated using a relational account (“I-We” strategy) as compared to female employees who let the opportunity to negotiate for a raise pass. Variation in the negotiation scripts did not significantly influence the evaluations of male negotiators.

I should highlight that not every legitimate explanation for negotiating helped women. For instance, conventional wisdom in the negotiation community has been to negotiate for a raise when you have another job offer. We tested multiple negotiation scripts based on an outside offer — even ones suggesting that the offer just dropped in the employee’s lap. Unfortunately, in all of the outside-offer scripts we tested, the suggestion that the employee would leave if the offer were not matched seemed to undermine the impression that the employee cared about organizational relationships. As a result, evaluators reported being more willing to grant a woman with an outside offer a raise, but they were disinclined to work with her (as compared...
to if she let the opportunity to negotiate pass). The outside-offer scripts had no significant
effects on the evaluation of male negotiators.

The key to a relational account (or “I-We”) strategy is to explain why your counterpart should
perceive your negotiating as legitimate in terms that also communicate your concern for
organizational relationships.

I should acknowledge that this idea of using “relational accounts” or “I-We” strategies drives
some women crazy. It makes them feel like they are bending to unjust stereotypes or simply
being inauthentic. I sympathize with that reaction. We were surprised while doing the research
that it would be so hard to make the backlash effects go away. But, every movement needs its
idealists and pragmatists, and I am playing the pragmatist here.

It is good advice for any negotiator – male or female — to ask for what they want in terms that
their counterparts will perceive as legitimate and mutually beneficial. But for women, it is
especially helpful because it unburdens them from the social costs of self-advocating. By
sharing this research, I hope to shed light on this bias. Most people don’t want to discriminate.
With more self-awareness as negotiators and evaluators, we can work to close this gender gap.

Have questions or feedback for us? Write to us at hbrascend@hbr.org
Hannah Riley Bowles

Senior Lecturer at the Harvard Kennedy School. She teaches executive programs for women at the Program on Negotiation at Harvard.
When it comes to negotiating a raise, women often don't try. When they do, it can be seen as aggressive or demanding.
In the face of a persistent gender pay gap, researchers and women’s advocates are focusing on one little-discussed part of the problem: Women simply don’t ask for more money.

There are many reasons why, despite widespread gains in the workplace, women still earn on average about 78 cents to a man’s dollar. But the failure to negotiate higher pay is crucial. Research shows men are four times more likely than women to ask for a salary raise, and economist Linda Babcock of Carnegie Mellon University says this has a snowball effect. Even a small pay boost will mean bigger annual raises and possibly bigger bonuses and it will carry over to a new employer, who is almost certain to ask: *What was your last salary?*

"I tell my graduate students that by not negotiating their job at the beginning of their career, they're leaving anywhere between $1 million and $1.5 million on the table in lost earnings over their lifetime," Babcock says.

And her figure doesn’t even include company retirement contributions, which are also based on a share of salary.

Babcock says women often just don't think of asking for more pay. If they do, they find the very notion of haggling intimidating, even scary.
"They wait to be offered a salary increase," she says. "They wait to be offered a promotion. They wait to be assigned the task or team or job that they want. And those things typically don't happen very often."

In fact, this hesitation might be for good reason. It turns out that when women do negotiate, it can backfire.

'Way Too Aggressive'

Babcock showed people videos of men and women asking for a raise, following the exact same script. People liked the man's style and said, 'Yes, pay him more.' But the woman?

"I tell my graduate students that by not negotiating their job at the beginning of their career, they're leaving anywhere between $1 million and $1.5 million on the table in lost earnings over their lifetime.

Linda Babcock of CMU
"People found that to be way too aggressive," Babcock says. "She was successful in getting the money, but people did not like her. They thought she was too demanding. And this can have real consequences for a woman's career."

To be clear, both men and women thought this way.

Babcock and Harvard researcher Hannah Riley Bowles wanted to find a way for women to ask for more yet avoid this societal backlash. They tested various strategies and found some that do work. Women can justify the request by saying their team leader, for example, thought they should ask for a raise. Or they can convince the boss their negotiating skills are good for the company. The trick, Babcock says, is to conform to a feminine stereotype: appear friendly, warm and concerned for others above yourself.

"I gotta say, that was very depressing!" she says with a laugh.

Lisa Gates also found herself depressed. She's a life coach in Santa Barbara, Calif., and she helps women create all sorts of plans to advance themselves. But then she finds they just can't — or won't — ask for what they want. A year ago Gates teamed up with mediation expert Victoria Pynchon to teach a course called She Negotiates. They teach coaching sessions via teleconference, honing skills they say are useful well beyond the office.

**Silence Is Golden**

In one recent role-play, a student named Deborah wants to ask her ex-husband for an advance in child support.

"Marty, I'm just, I'm wondering how you feel about all this," she says, and then rambles on about a conversation the two had the week before, her insecurities as a parent and a loved one with Alzheimer's.

"Stop! Stop!" Pynchon cuts in. "Brilliant opening open-ended question," she tells Deborah. "And then you're uncomfortable and when you're uncomfortable you talk."
Deborah admits as much. Pynchon advises her that "the most powerful negotiation tool is silence."

Her business partner, Lisa Gates, says women get better with practice, so she gives assignments.

"We might have them go out and negotiate retail," she says. "Try to buy a pair of shoes and say, 'Did I miss the sale on this? Is there a sale coming up? I'd like to get the sale price on these shoes.'"

Girl Scouts can carry out a series of 10 negotiations to earn a badge called Win-Win.

Program for Research & Outreach on Gender Equity in Society

**Speaking Up**
Trudie Olsen-Curtis had been at the same bartending job for four years when she signed up for the negotiating course.

"I had honestly not really thought about asking for a raise before," she says.

Olsen-Curtis learned to assess her skills based on their market value. She then worked up the nerve and approached her boss, reminding him she was punctual, honest and loyal.

"I felt like I was pretty tough," she says. "Because he kept trying to maneuver around it, talking about the economy, la la la, you know. I had to keep bringing him back to, 'This is the value that I give you.'"

It worked. Olsen-Curtis got a 25 percent raise.

Researcher Linda Babcock has decided real change must start young. She's launched an effort to teach negotiating skills to girls and came up with this new twist on an old tradition: Girl Scouts can now carry out a series of 10 negotiations to earn a badge called "Win-Win."

**Related NPR Stories**

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MELISSA BLOCK, Host:

And NPR's Jennifer Ludden explores one of them now. Women don't negotiate as much as men.

JENNIFER LUDDEN: Here's what's at stake. Economist Linda Babcock, of Carnegie Mellon, says negotiating even a small boost in pay at the start of your career will have a snowball effect. It will mean a bigger annual raise, possibly bigger bonuses, and it will carry over when you change companies and they ask - as they always do - what was your last salary.

P: I tell my graduate students that by not negotiating their job at the beginning of their career, they're leaving anywhere between a million and a million and a half dollars on the table in lost earnings over their lifetime.

LUDDEN: Babcock's research shows men are four times as likely to ask for a pay raise. So the people leaving all that money on the table are overwhelmingly women.

P: They wait to be offered a salary increase. They wait to be offered a promotion. They wait to be assigned the task or team or job that they want. And those things typically don't happen very often.
LUDDEN: Babcock showed people videos of men and women asking for a raise, following the exact, same script. People liked the man's style and said yes, pay him more. But the woman?

P: People found that to be way too aggressive. She was successful in getting the money, but people did not like her. They thought she was too demanding. And this can have real consequences for a woman's career.

LUDDEN: To be clear, men and women thought that way. Babcock has found some strategies that do work for women without the backlash. They can justify the request by saying their team leader, for example, thought they should ask for a raise. Or they can convince the boss their negotiating skills are good for the company.

T: appear friendly, warm, and concerned for others above yourself.

P: I got to say, that was very depressing.

LUDDEN: A year ago, Gates teamed up with mediation expert Victoria Pynchon to teach a course called "She Negotiates." They hold coaching sessions via teleconference, honing skills they say are useful well beyond the office.

LUDDEN: I'm going to ask for somebody else to jump in, to practice...

LUDDEN: In this role-play, Deborah wants to ask her ex-husband for an advance in child support.

DEBORAH: Marty, I'm just, you know, I'm wondering how you feel about all this, you know, 'cause I mentioned last week, you know, we kind of had the spirited conversation, as you called it, that I was mentioning it would be good...

LUDDEN: Stop, stop, stop, Deborah. Brilliant opening, open-ended question, and then you're uncomfortable.

DEBORAH: Yeah.
LUDDEN: And when you're uncomfortable, you talk.

DEBORAH: Yeah.

LUDDEN: So let me remind you: The most powerful negotiation tool is silence.

LUDDEN: Lisa Gates says women get better with practice, so she gives assignments.

BLOCK: Oh, we might have them go out and negotiate retail. Did I miss the sale on this? I'd like to get the sale price on these shoes or, you know, anything.

BLOCK: I really learned to be conscious about the fact that I had never asked before.

LUDDEN: Trudie Olsen-Curtis had been at the same bartending job for four years when she took the negotiating course. She says it taught her to assess her skills based on their market value. She worked up the nerve and approached her boss, reminding him she was punctual, honest and loyal.

BLOCK: I felt like I was pretty tough because he kept trying to maneuver around it, talking about the economy and la, la, la, you know. I had to keep bringing him back to: This is the value that I give you.

LUDDEN: Jennifer Ludden, NPR News.
Why Don't More Women Negotiate?

Carol Sankar  Forbes Councils Member

Carol Sankar is leadership advisor and founder of The Confidence Factor For Women, as seen on TEDx, SXSW, Forbes, CNN, The Steve Harvey Show

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The act of professional negotiation has a completely different definition for me than for women. For women, negotiation is seen as an improper act of appearing “greedy” or desperate. It is frowned upon by women, who are often intimidated by the act of asking for their worth in business and the workplace.

The same could not be further from the truth for men. In fact, men are encouraged to ask, renegotiate compensation agreements, partnerships and more. It is a highly marketable skill, which is viewed as a key leadership strategy.

Let us revisit why there is a sharp contrast.

I have developed negotiation training, which I deliver to corporations on a monthly basis to help women acquire the skills to demonstrate their value to decision makers. I have presented this material hundreds of times to women in various middle and senior level roles, and there is always at least one woman in the room who will ask the question, “Don’t you think I should wait a few more years before asking for a raise?”

The immediate feeling of doubt and the ability to feel “under-qualified” when it is time to re-evaluate leadership performance and value creates an added level of anxiety for women leaders. According to a recent survey published by Glassdoor, "Women negotiated less than their male counterparts. Sixty-eight percent of women accepted the salary they were offered and did not negotiate, a 16-percentage point difference when compared to men (52%)."

In reality, negotiation is the key to closing the pay and value gap in the workplace and business. Women are not encouraged to perceive the value of developing an annual negotiation strategy without feeling penalized and judged. As a result, women will settle for lower compensation agreements and starting salaries.
“Women may not realize that many companies set aside money with the expectation that employees will ask for better compensation packages... Yet only 30% of women bother to negotiate at all, while 46% of men negotiate,” according to Katie Donovan, founder of Equal Pay Negotiations. These figures add up to almost $2 million in lost revenue over a lifetime for the average woman seeking to climb the leadership ladder.

From personal experience, as I continue to work with women leaders, the battle between the need to be viewed as a hard worker who is ambitious and trustworthy vs. greedy and selfish are the two factors that weigh into the decision to delay the conversation and focus on the gratification that “one day, someone is going to walk up to their office and make them an offer. There is an overwhelming feeling that we will be punished for asking, so we simply do not.

Shifting the focus is necessary to make inclusion work for all. Although there are resources and tools to assist women with negotiating, there are unconscious self-biases women feel in the workplace, which fails to support an inclusive corporate culture. In addition, women need to be supported by mentors and advocates to understand that negotiating is not only for compensation, it also opens up dialogue around the advancement of opportunities and responsibilities so we can close the gender gap. Although there are men who are intimidated by negotiating as well, they have more unsolicited qualified support to navigate them through the process.

Why aren’t more women asking?

They are simply afraid to ask. We have been nurturing the gratification of “just getting in the door and taking something for now.” It is the way we have been conditioned to sacrifice our value in exchange for public recognition, with the optimism that it will take more time. However, as we discuss factors that will close the gender value gap, the key to fair consideration is negotiating.

**Here is how to start the conversation:**
1. **Create or join an Employee Resource Group(s).** It is the best way to connect with other women, who may have similar experiences within your company/organizations while inviting experts to educate your group on options and solutions. ERG's provide several constructive educational sessions and mentoring opportunities as well.

2. **You may be rejected the first time you ask.** Employers are always thinking about the budget, hence they may not honor your request the first time. Do not take the rejection personally, it is a factor of timing. However, you must remain optimistic and improve your argument.

3. **Negotiate for more than just money.** Ask for new roles and responsibilities to utilize your skills. Sometimes, the key to an increase in compensation and consideration is by negotiating to take initiative to lead a department/project, which will substantiate your argument.

4. **Always know your unique value proposition (UVP).** Your UVP defines the replacement value of your professional contributions to the collective of the corporate culture. Discuss why you are an invaluable asset and leader, not just an employee.

Negotiating is a necessary skill that will close the gender gap. Women have numerous resources that continue to remain under-utilized but can assist with eliminating the stigma of asking. The pay gap widens with age, and if women are not encouraged and supported to ask for more, the gender gap will be more difficult to close while women continue to seek gender equity in leadership.

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Carol Sankar

Carol Sankar is a leadership advisor & founder of [the Confidence Factor for Women](https://www.forbes.com/sites/forbescoachescouncil/2017/07/13/why-dont-more-women-neg...), as seen on TEDx, SXSW, Forbes, CNN, The Steve Harvey Show.... [Read More](https://www.forbes.com/sites/forbescoachescouncil/2017/07/13/why-dont-more-women-neg.../)

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On Tuesday, the average woman’s annual income finally “caught up” to what the typical white man earned by Dec. 31. Women earned just 82% of what men did in 2017, meaning it would take them roughly three months and 10 days of additional work to make the same amount of money.

The National Committee on Pay Equity — a coalition of women’s and civil rights organizations — has marked this disparity every year since 1996 with a designation known as Equal Pay Day. And though the gender pay gap has narrowed in the last half-century, there are still areas that need vast improvement if it’s ever going to close for good.
Experts expect the gender pay gap to close by 2059, based on the rate it narrowed between 1960 and 2016. But the most immediate beneficiaries will be white and Asian women, who earn 79 cents and 87 cents to every white man’s dollar, respectively.

Other racial groups will likely require more time. Black women — who make 63 cents for every dollar white men receive — would not see equal pay until 2124, at the current rate. It would take Hispanic women until 2248 to hit the same benchmark. They make 54 cents to the dollar.

It’s clear that slow progress is being made toward gender parity in income across racial lines, albeit at different rates. But the 74.6 million women in the American labor force continue to face long-term economic disadvantages because of the current gap.

Here’s how.

**Poverty rates**

Failure to pay women equally limits their ability to attain economic stability. If women were paid the same as men, for instance, the poverty rate among working women would decrease from 8.0% to 3.8%, according to the Institute for Women’s Policy Research.

This impacts the children of these women, too. Of the 5.6 million children in poverty today, 2.5 million would come out of poverty if the gender pay gap closed, the study states.
Student loans

A 2018 analysis from the American Association of University Women found that full-time working women who graduated college in 2007 and 2008 had paid off 33% of their student loan debt by 2012. Men who graduated in those same years had paid off 44%.

These numbers differ by race as well. At 61%, Asian women from this cohort had the highest percentage of debt paid off among women. White non-Hispanic women had paid off 37%, black women 9% and Hispanic or Latina women 3%.

Retirement
In October 2017, UBS Wealth Management analyzed the U.S. pay discrepancy for lifetime income between men and women entering retirement.

Researchers ran a set of gender pay simulations — using “Joe” and “Jane” to signify a male and female character, respectively — and analyzed their potential life outcomes. The female character made less than the male character in both scenarios.

But the more researchers adjusted for real-life challenges, the worse the outcomes became. Accounting for time she might have to take off work to care for children or an elderly parent, the female character made 43% less than what the male character made by the time they were 85. When they removed all qualifiers and based their findings on the gender pay gap alone, she made 38% less than what he made by age 85.
April 05, 2019

Negotiate for Better Compensation

Negotiate for Better Compensation

While a lot of factors related to compensation may be out of your control, one of best ways you can influence your pay is to learn to negotiate for yourself. The Task Force on Gender Equity has developed several tools to help you prepare for your next salary negotiation.

- What You Need to Know about Negotiating Compensation (PDF)

Listen to what Laurel Bellows, past ABA President and an expert on executive compensation, has to say about negotiating compensation. This video series was produced during Ms. Bellows' presidential initiative in 2012-3.

Above:
Negotiate for Better Compensation

Negotiate Your Way to Equal Pay: Preparation Is Power

Above:

Negotiate Your Way to Equal Pay: Don't Be Afraid to Tout Your Value

Above:

Negotiate Your Way to Equal Pay: Trust, but Get It in Writing

https://www.americanbar.org/groups/diversity/women/initiatives_awards/gender-equity/neg...
Closing the Gap

A Road Map for Achieving Gender Pay Equity in Law Firm Partner Compensation

Lauren Stiller Rikleen

Publications Presented by the ABA Presidential Task Force on Gender Equity and the Commission on Women in the Profession

• ABA Toolkit for Gender Equity in Partner Compensation
• 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
• What You Need to Know about Negotiating Compensation

Visit the ABA Task Force on Gender Equity website at www.americanbar.org/GenderEquity.
All of these titles are available for download at no cost at the Task Force website.

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Closing the Gap

A Road Map for Achieving Gender Pay Equity in Law Firm Partner Compensation

Lauren Stiller Rikleen
Study after study has long shown that women lawyers are not paid at the same level as their male counterparts. In August 2012, a blue-ribbon Task Force on Gender Equity was created 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 publication is one in a series of projects the Task Force has implemented to promote gender equity.

The attrition of women from law firms remains disproportionately high, and a contributing factor is the gender pay gap. The pay disparity increases with seniority, as law firms’ subjective decisions regarding whom to reward for the origination of business, and how much, often leave women lawyers shortchanged. *Closing the Gap: A Road Map for Achieving Gender Pay Equity in Law Firm Partner Compensation* addresses this vitally important issue, focusing on eliminating inequities at the partner level as the most straightforward approach to closing gender gaps in compensation at all sizes and types of firms.

Part one of this publication discusses key studies detailing decades of gender disparities in compensation. Part two sets forth twelve recommended practices that can make the compensation process fairer and more transparent and create a level playing field for female and male partners. These recommendations are directed to law firm leaders and are designed to fit within existing compensation systems and practices.
When women suffer pay inequities, they often vote with their feet and leave. Firms lose well-trained, talented women lawyers, and clients lose outside counsel with critical knowledge, experience, and familiarity with the client’s business. This severe talent drain also impacts the bottom line as firms lose their investment in these women lawyers and lose the potential revenue that women would generate if they remained with the firm. If today’s firms are to survive and thrive, they must retain, promote, and fairly reward talented women lawyers—before they leave.

Closing the Gap is a road map for implementing solutions: new ways for sharing origination credit, rewarding client development, recognizing contributions to firm growth, and implementing compensation systems that will help reduce, and eventually eliminate, the gender pay gap.

We owe an enormous debt of gratitude to author Lauren Stiller Rikleen, whose dedication, vision, and commitment helped to transform the idea for this publication into a reality. Special thanks also go to Patricia Kruse Gillette and Robert N. Weiner, Project on Model Compensation Policies Co-Chairs, and Stephanie A. Scharf, Compensation Projects Coordinating Chair, for their review of this manuscript and their effort in bringing Closing the Gap to fruition. In addition, we appreciate and acknowledge Shawn Taylor Kaminski, director of the ABA Commission on Women in the Profession, and the Commission’s publications manager, Barbara Leff, who shepherded this work through production.

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PART ONE
Introduction and Overview

American Bar Association President Laurel Bellows created the Task Force on Gender Equity to address the continued inequality that exists in both the legal profession and society. The Task Force was chaired by Roberta D. Liebenberg, chair of the ABA Commission on Women in the Profession (2008 to 2011 and 2013 to 2014), and consisted of twenty members appointed by President Bellows.

Pay inequity was a major focus for the Task Force. As will be more fully explained below, women lawyers earn significantly less than their male colleagues in the legal profession. This differential is often attributed to the greater family responsibilities that women may generally undertake; the facts, however, reveal a far more nuanced explanation. Research demonstrates that implicit bias also plays a significant role in the gender pay gap.

This report identifies the myriad studies that detail decades of gender disparities in compensation. It also describes some key studies that provide a research-based lens through which the gender compensation gap can be viewed and better understood. The Task Force report then provides specific, detailed recommendations that law firms can incorporate into their compensation system to ameliorate, if not eliminate, the gender pay gap.

The Task Force focused on gender equity, yet the data, research, and recommendations also apply to all lawyers in private practice who belong to a minority group. The data with respect to compensation differences demonstrates that all lawyers of color are significantly impacted, and women lawyers of color experience even greater pay disparities than white women. The ABA Commission on Women in the Profession, through its Women of Color Research Initiative, has published important studies examining the impact of race, ethnicity, and gender on the careers of female attorneys of color.¹ These studies are critically important contributions to research concerning the additional barriers that exist as a result of the dual impacts of race and gender.
Accordingly, the analysis in this report is directly applicable to the diversity efforts of any law firm. By implementing the recommendations set forth in Part Two to address the gender compensation gap, law firms are taking the steps needed to create a more diverse and inclusive workplace for all.

Why the Compensation Process Matters

The law firm compensation process marks the time of year when judgments are made with respect to the amount each lawyer should be paid. Compensation decisions go to the heart of a lawyer’s sense of self-worth and perception of value within the hierarchical structure of the institution: Most lawyers measure themselves against their colleagues, their contemporaries in other law firms, and against published statistical measures that provide a further benchmark as to how valued they feel.

Compensation drives behavior. When it is not transparent, people just behave in accordance with whatever they think the system is. This adage speaks to the variety of ways in which compensation is allocated within firms. If you want to understand an organization’s culture, look first at the way in which profits are distributed. Knowledge of a particular law firm’s compensation system provides the key to understanding the behaviors and interpersonal relationships that are likely to exist among that firm’s attorneys.

Overview of Compensation Factors

Compensation deliberations usually begin near the conclusion of a firm’s fiscal year. The process is generally managed by a small committee, although in some firms compensation decisions are part of the responsibilities of the firm’s senior governing body or, more rarely, the firm’s chair or managing partner (hereinafter, those responsible for the process, however implemented, will be referred to as the “compensation committee”).

The compensation committee analyzes a variety of key measures that each firm weighs differently according to its own compensation model. These measures generally include:

1. Individual Timekeeper Statistics: Two sets of statistics matter here—the amount of billable time that an individual lawyer worked and the fees brought into the firm as a result of those billable hours.
2. Client Origination Receipts: This statistic tracks fees generated from each client and credits the lawyer(s) “responsible” for bringing the client into the firm. The complications of allocating this type of credit are analyzed in greater detail, below.
3. Subjective Factors: Firms that consider subjective factors in their compensation model may look at a variety of behaviors and involvements, such as:
   – Is the lawyer a “good firm citizen” who participates in various committees that are critical to the effective functioning of the firm?
   – Does the lawyer raise the firm’s profile and enhance its reputation?
– Does the lawyer mentor other lawyers in his or her practice group and otherwise help develop the skills and expertise of associates?
– What is the quality of the lawyer’s work?
– How well does the lawyer get along with colleagues? Does the attorney treat support staff respectfully?
– Is the lawyer a team player?
– Does the attorney share credit fairly?
– Does the lawyer contribute to the profession through, for example, participation in bar associations or other organizations that focus on the administration of justice?
– Is the lawyer active in outside organizations? What is the lawyer’s reputation in the community?

Firms weigh these subjective factors differently, resulting in nearly as many compensation system variations as there are law firms, each with its own nuances designed for the firm’s particular culture. But even as firms may consider subjective factors, the reality in most law firms is that client origination, revenue collection, and billable hours remain the three key criteria.

In a 2012 survey of the compensation systems of 263 large law firms in the United States, Canada, the United Kingdom, Europe, and Australia, consulting firm Edge International identified the way different factors come together within specific compensation systems. Recognizing the “literally hundreds of variations a firm could select,” the Edge survey described the most frequently used compensation systems, including:

• **Lockstep or Modified Lockstep**: As historically developed, a lockstep system categorized groups of lawyers according to seniority, and compensation increased accordingly. Today, for those firms that retain some form of lockstep for partners, it is more common for the system to be subject to some modification based on individual performance.
• **Formula**: Systems that rely strictly on a quantitative formula will base all compensation decisions on such metrics as individual statistics for billable hours and the receipts on those hours, and the client origination fees from new work.
• **Subjective and Modified Subjective**: In a subjective system, the compensation committee bases its analysis on perceptions and impressions of an individual lawyer’s performance. A modified subjective system may consider objective performance statistics to supplement the subjective opinions.
• **Combination of Subjective and Objective Factors**: In a combination system, firms begin the process with an analysis of objective performance statistics, and then may consider subjective circumstances that may have affected an individual’s performance that year.

In most all of these systems, firms assign partners shares or points that are the basis for the distribution of partner income and the share of profits. Critically, most firms also set aside a significant pool of funds for the distribution of bonuses. Notwithstanding the
objective criteria applied, there is generally substantial opportunity for discretionary judgments to play a role.

The Edge survey analyzed the frequency of use of these different compensation systems among the firms surveyed and reported that:\(^3\)

- Pure lockstep systems are in decline in most countries.
- In countries where lockstep systems are more prevalent, there is movement toward a modified version where performance factors are also considered.
- Usage of the formula-based system has not changed in six years and “... with the exception of very small firms, the use of strict formulas is essentially only present in the U.S. and represents less than 5 percent of law firms.”\(^4\)
- Purely subjective systems, along with modified subjective systems that may include a formula even though the ultimate decisions are subjective, are primarily used in Canada (38 percent), the U.S. (54 percent) and Australia (17 percent).
- So-called combination systems—that is, subjective systems that contain elements of formulas to rate individual performances—are identified as representing “the fastest growing compensation system regardless of country.” Use in the U.K. tripled (from 7 percent in 2006 to 20 percent in 2012), nearly doubled in Canada (62 percent in 2012), remained approximately the same in the U.S. at 38 percent, and grew from 0 to 5 percent in Europe.

Importantly, the Edge survey analyzed the impact of the economic crisis on the law firm compensation process. The results showed interesting trends and incremental changes, but little in the way of significant shifts. The report specifically stated: “We have observed previously that it is difficult for firms to transform their compensation model completely and will prefer to modify and incrementally change their current model.”\(^5\)

Regardless of the individual nuances of each system, however, the amount of compensation \textit{available for distribution} is largely dependent on the production value of billable hours. In fact, the relentless drive for increased billable hours and the ever-burgeoning compensation demands of lawyers have become inextricably linked.
Historic Factors and Today’s Compensation Landscape

The Rise in Associate Salaries and the “Power of One”

Nearly eight years before the start of the economic crisis—just at the turn of the new century—a decision was made by a Silicon Valley law firm to significantly raise starting salaries in order to stem the loss of associates lured by high tech firms needing their own in-house lawyers. News of the firm’s dramatic increase in associate compensation spread quickly, and it was only a matter of months before major firms across the country were following suit. This one firm’s decision dramatically changed the economics of law firms in the years that followed.

This decision is also a critical example of how one firm can make a difference in the profession. Although the profession can be slow to enact changes, when one law firm does act, the effect on other firms can be swift. Law firms do not generally like to be outliers, particularly with respect to behaviors that significantly impact the retention of talented lawyers. It is an important principle to keep in mind throughout a discussion and analysis of how to build compensation models that promote equity.

The Effect of Increased Associate Compensation on Law Firm Culture

The widespread associate salary increases had a profound impact on law firm culture and the relationship between partners and associates. A comprehensive survey of associate
attrition undertaken by the NALP Foundation a few years after the pay hike quoted some associates referring to their six-figure salaries “as a curse, rather than a cure.” The NALP Foundation further stated that associate “disaffection evolves from higher billable expectations and an undercurrent of resentment from partners who struggle to accept the wages paid to ‘novice’ lawyers.”

Clients, too, became unhappy with the increased costs. Over the years, they have grown increasingly attentive to their outside counsel expenditures. In the past decade, clients have played a much more aggressive role in negotiating fees, becoming involved in the number of personnel assigned to their work, and resisting bills that include time spent by recent law school graduates.

Enter Laterals – The Further Escalation of Salary Demands

The changing associate compensation landscape and related client concerns about their outside counsel costs significantly impacted law firm economics. As firms looked for ways to increase revenues, many developed a hyper-focus on attracting experienced lawyers who could arrive at the law firm with their own client base, bringing new work or possibly new areas of expertise, or achieving synergies with existing practice areas in the firm (hereinafter “lateral hires”). The escalating attention to attracting lateral hires—fueled by promises of high compensation that have even included signing bonuses and/or guaranteed incomes for a period of years—has also dramatically altered law firm culture and economics.

The numbers tell the story of this frenetic movement. According to a recent study, since the year 2000, more than 30,000 partners in large law firms have made lateral moves. Yet the data also revealed “no statistical relationship between an aggressive lateral strategy and higher profits per partner. Indeed, the most profitable firms tend to have the lowest rates of lateral hiring—roughly 1 percent per year.”

The data analysis indicates that the focus on lateral hiring is driven more by fear than strategic planning: Firms are vulnerable when their large fee producers threaten to leave if they are not sufficiently compensated, resulting in decisions to let less profitable partners go or to demote them and hire lateral attorneys who have greater economic promise. Ironically, “when the majority of large corporate law firms pursue this strategy, managers can find it impossible to distinguish between laterals who are being pushed out and those who will contribute more than they take out.” Nonetheless, according to the survey, “96 percent of managing partners said they expected to grow through lateral partner hiring over the next two years, yet only 28 percent reported that lateral hiring had been a highly effective strategy in the past.” It remains difficult, however, for a law firm to break the pattern of lateral hiring. Firms feel at risk of missing a hiring opportunity—or losing a rainmaker—by not being responsive to this significant activity in the legal market.

And even as some firms have tried to put more structure around the lateral hiring process, the success rate remains lackluster. “Firms may be coming up with better procedures for each step of the lateral hiring process, but they often fall short when it comes
to implementing them. Due diligence can be rushed or left incomplete; lofty integration plans might be forgotten or shoved aside after a new partner’s first weeks.\textsuperscript{16}

In the recruitment and rewarding of lawyers who have been successful in their prior firms, law firms have too often ignored the impact on their own culture. A 2013 analysis of the legal market reported that lateral movements “have been an additional source of friction in many firms, as there is a perception that laterals are often paid disproportionately more than ‘homegrown’ partners for similar ‘books of business.’”\textsuperscript{17}

Unchecked lateral hiring has even contributed to the demise of one of the oldest and largest firms in the world, Dewey & LeBoeuf. Key among the managerial mistakes that led to the firm’s collapse was the significant compensation guarantees made to the many lateral attorneys the firm recruited.\textsuperscript{18} In its final year, the firm hired thirty-seven partners “from rivals with multimillion-dollar, multiyear guarantees.”\textsuperscript{19}

The demand for laterals also ignores research that shows that star performers under one set of circumstances may not necessarily replicate their results in a new workplace. For example, the \textit{Harvard Business Review} reported on a study of star performers who were lured to new companies. The research revealed that the move generally resulted in such disappointing results as a drop in performance and a decline in the functioning of the team with whom the star worked; moreover, the star tended not to stay with the new organization for long.\textsuperscript{20}

This focus on laterals has a gender impact, particularly with respect to compensation, as women comprise only a small percentage of these hires. In 2009, the National Association of Women Lawyers (NAWL) Foundation reported “an overall increase in recent lateral moves” and noted that “the move still favors men, who make up an astounding 85 percent of all recent equity laterals while women make up only 15 percent of all recent equity laterals.”\textsuperscript{21}

Gender disparities are further revealed by reviewing the section of any legal publication that announces new hires. For example, the February 2013 issue of \textit{The American Lawyer} identified lateral “all-stars.” In its listing of the most high-profile lateral moves of 2012, fewer than 17 percent of those highlighted were women.\textsuperscript{22} Similar analyses in other publications reveal comparable results.

\section*{Gender Disparity in Compensation – Pervasive and Long-standing}

Many studies and reports demonstrate a clear and long-standing compensation gap between male and female lawyers that widens over time. There is even data demonstrating that marriage is associated with a decrease in income for women attorneys and an increase for men.\textsuperscript{23}

The case for change in law firm compensation models is found in these detailed studies that have been conducted throughout the time women have been in private practice in meaningful numbers. These studies may differ somewhat in the extent of the gap and the point in the careers of men and women at which a gap develops most clearly, but the studies all demonstrate compensation disparities.
A sampling of the results of these studies reveals the persistent gender gap:

- Surveys of Colorado lawyers in 1993 and 2000 reported continued and pervasive income disparities between male and female attorneys.\(^2^4\)
- An in-depth survey of law firms in the state of Washington reported startling gender disparities at all levels.\(^2^5\)
- A 2005 Economics of Law Practice survey conducted on behalf of the Massachusetts Bar Association revealed a wide gap between the earnings of men and women that increased at the higher income levels. For example, 32 percent of the men earned $151,000 or more, compared to just 12 percent of the women. Concomitantly, 73 percent of the women earned less than $101,000 compared to 47 percent of the men.\(^2^6\)
- While only about half the male attorneys with five years or less experience in Indiana made under $60,000 per year, approximately three-quarters of the female attorneys with the same experience had similar earnings.\(^2^7\) Moreover, with increased seniority, the numbers worsened: “Twice as many women than men who have between five and nine years of experience earn $60,000 or less . . . [And] 50 percent of the women and 18 percent of the men with ten to fourteen years of experience earn $60,000 or less.”\(^2^8\)
- A study of University of Michigan Law School graduates at five and fifteen years after graduation reported that women and men began their careers at approximately equivalent salaries, but by their fifteenth year, women lawyers earned only 61 to 63 percent as much as male lawyers.\(^2^9\) Although some of the discrepancy can be accounted for by differences in work hours and in work interruptions, once the data controlled for such labor supply differences, “childless women earn no more than mothers, and single women earn no more than married women.”\(^3^0\)
- A 2010 Florida Bar survey reported that women lawyers earn fifty-nine cents for every dollar earned by a male lawyer.\(^3^1\)
- The American Bar Foundation and the National Association for Law Placement Foundation for Law Career Research and Education have collaborated on a longitudinal study of lawyers who graduated in the year 2000—following the career paths of thousands of lawyers and examining the factors that influenced their career choices. In 2009, the second of its three phases of study was released (hereinafter “After the JD 2”). The study’s findings with respect to compensation corroborated the findings from the initial phase of data released in 2004, reporting that “from the outset of their careers, women earn less than men. At seven years out the earnings gap has remained among those working full time, with women earning about 85 percent of men’s salaries, on average.”\(^3^2\) The After the JD 2 study further stated that “the gender gap in earnings has widened in almost every practice setting.”\(^3^3\) Critically, the study further reported that women were earning fewer dollars per hours billed than were men in almost every practice setting.\(^3^4\)

The extensive data collected and analyzed over the years demonstrates what even more recent data, described below, further confirms: *Gender discrimination—whether conscious or*
not — accounts for the significant earnings advantage of male lawyers. As one study concluded: “Even with differences in labor supply and work history accounted for, men enjoy a considerable earnings advantage. This suggests . . . that the legal labor market, on average, treats men and women differently—that there is discrimination by sex.”

Key Current Data, Continued Inequitable Results

Historical trends tell an important part of the story of gender inequity in compensation. But current numbers are even more compelling and provide similarly troubling results. Three key studies demonstrate consistent trends and further clarify why an aggressive response is warranted.

The NAWL Foundation Survey and the Equity Partner Barrier

Since 2006, the National Association of Women Lawyers and the NAWL Foundation have reported the results of their annual National Survey on the Retention and Promotion of Women in Law Firms (the NAWL survey). The NAWL survey is unique. It annually tracks the progress of women in the country’s largest firms and provides comparative data for men and women lawyers on a variety of measures, including compensation. “As has been the case ever since the survey began collecting data, women at every stage of practice earn less than their male counterparts, with the biggest difference at the equity partner level.”

The NAWL survey data, which was released in October 2012, confirmed this continued gender inequality that begins at the associate level and widens with experience and stature. At the associate level, for example, the NAWL survey reported that “women constitute nearly 45 percent of the associate pool, yet they receive only 40 percent of the bonuses.” And although the data showed the gap narrowing for women income partners, the gap is still large at the equity partner level.

It is also critical to view these compensation disparities against the long-standing barrier that women have faced in breaking into the equity partner ranks. Over the past decade, when the increasing number of women already in the proverbial pipeline should have resulted in significantly more women promoted to equity partner, women have remained stuck at approximately 15 percent of the equity partner totals nationally. This has a direct impact on the gender gap in compensation, as the differential between the compensation of equity partners and non-equity partners has grown enormously. A 2013 analysis of the legal market reported that “equity partners now average about 2.5 times the total compensation of their non-equity partners. During the past year, the compensation of equity partners jumped some 11 percent, while the compensation of non-equity partners was essentially flat.”

This demonstrates the direct impact to women lawyers’ pay resulting from the continued high barrier for entry into the equity partner ranks. The slow progress for women in attaining equity partner parity is as much a compensation issue as it is a leadership concern.
The Major, Lindsay & Africa Survey
A compensation survey was conducted by the legal recruitment firm Major, Lindsey &
Africa, LLC (MLA). MLA’s 2012 research was modeled after its 2010 comprehensive
survey of compensation practices in large national and global law firms. Of particular
importance, MLA reported a widening gap between average compensation for male and
female partners.40

The Keshet Study
An important new study by Keshet Consulting reveals just how ingrained disparate
compensation may be within the structure of most law firm compensation systems. The
Keshet study demonstrated that, even when data is adjusted to show similarly situated men
and women with respect to billable hours and origination, male partners still earn more than
female partners.

Specifically, the Keshet study found that "gender is a major factor in compensation.
Male equity partners receive a higher mean and median compensation than female equity
partners when origination, billable hours, partner tenure, and size of firm are controlled.
Female equity partners earn less compensation than their male colleagues do. This differ-
ence was especially true at high levels of origination and within law firms of 1,000 or
more attorneys."41

Importantly, although Keshet’s study showed that both men and women participate in
client pitches, such pitch group participation was far more significantly correlated with
origination credit for men than for women. Moreover, Keshet found that male lawyers
received significantly more internal firm referrals for new work and had a higher percent-
age of the origination from internal referrals.

The conclusion of the Keshet study echoes the decades of research that preceded it,
offering current data that supports the conclusion that compensation in law firms is not
gender neutral. “These findings suggest that law firms do not compensate their lawyers
based solely on merit and achievements. The race, ethnicity, and the gender of high-
achieving partners impacts compensation. A white male high-achieving partner is com-
penated more than his female and non-white colleagues who have the same levels of
billable hours and origination.”42
Identifying the Barriers to Pay Equity

The Deep Roots of Pay Inequity

The numbers make clear that a gender gap exists with respect to the compensation paid to men and women in law firms. As long as the data demonstrates such a pay differential, there is a compelling need to look behind the numbers to understand the factors that help explain the disparity.

In her book describing the continuing pay inequities between men and women at all levels, former Massachusetts Lieutenant Governor Evelyn Murphy wrote of “everyday discrimination” that erodes women’s pay. She reported on the “below-the-threshold experiences” in which the biased expectations and behaviors of others negatively impact women’s advancement and their compensation. She also stressed the need to recognize and understand that more subtle forms of discrimination—the failure to be given credit for work accomplishments, the exclusion from client-development opportunities, being the only female member of an otherwise all-male management team—have a bottom-line impact on the pay gap.

One expert observed that compensation disparities can be exacerbated by the fact that fewer women than men raise formal complaints about their compensation to the firm. That differential in behavior may lead firms to conclude that “women appear satisfied with their compensation because they do not complain.” What firm management may not see, however, are the other concerns that drive the silent resignation to compensation inequities such as fear of negative ramifications, worry about the need for future leave time, other worries about the need for flexibility to address family schedules,
or even the concern that they may “feel that they have to justify receiving a higher level of compensation.”

All of these issues are relevant to the gender gap in law firm compensation and are more fully discussed, below.

**Compensation Drives Behavior**

Lawyers modify their behaviors based on qualities rewarded by their compensation system, resulting in repercussions that affect the entire firm. The Edge survey reported that, throughout the world, the two factors most critical to compensation were the value of the legal work personally performed by a partner and business development. Strikingly, the report also noted: “Technical expertise and capability, or non-billable work as a firm manager or practice group leader, was not found to be a material factor for setting compensation in any country.”

Compensation systems should meaningfully recognize behaviors that are critical to the long-term stability of businesses, including law firms. When these systems do not, the impacts are profound and personal, leading to a collective focus on short-term results and discouraging behaviors that build institutions for the long term. The effect is the clear perception that only those who develop their own clients—and who are recognized in their firm’s compensation system for that behavior—will progress.

Negative behaviors particularly can arise with respect to the allocation of internal compensation credit for client generation and work performed. For example, a partner who brings a new client to the firm or who is deemed responsible for a long-time institutional client may be designated in the firm’s record-keeping system as the “origination attorney” or the “billing attorney.” A partner who is responsible for the management of workflow may be designated the “responsible attorney.” The titles and specific methods of allocating credit vary across firms, but the process of recognizing key roles in client origination and management is frequently the source of significant internal dispute.

**The Complexity of Allocating Credit**

The allocation of credit for the origination or retention of client work is often fraught with controversy. It can be difficult to agree on which attorney(s) are actually responsible for either bringing a new client into the firm or generating new matters from existing clients. The fundamental dilemma is as follows: Which attorney has the right to claim that a client’s business is at the law firm because of that individual lawyer’s efforts? How do you allocate credit for a client’s engagement of a law firm among lawyers who may have originally been involved in encouraging the client to consider the firm, lawyers the client would follow to another law firm, lawyers responsible for keeping the client happy on a day-to-day basis by the quality of the work they perform, and lawyers who may have been responsible for introducing the client to other practice groups within the firm? Very rarely is the same lawyer responsible for all aspects of a client’s business, but
the way in which the firm’s compensation system allocates these credits—if at all—has a tremendous impact on what lawyers earn.

The idea of sharing credit for a client’s work is additionally problematic when the relationship with the firm dates back decades or longer. In most firms, the lack of a formal client succession process can have the unintended behavioral effect of encouraging lawyers to scramble to succeed to billing credits for long-time institutional clients when an originating or primary billing attorney retires or otherwise leaves the firm. In many firms, a retiring partner unilaterally bequeaths a client to a handpicked successor, who is frequently a male. But the lawyer who is selected may not be the best choice for the client or the choice that is in the long-term interests of the firm.

The phenomenon of treating clients like one’s personal property was described in a law journal article as resulting from the profession’s transition to a client production system that devalues teamwork and rewards individualism. The authors noted: “In the heyday of law firm growth, clients were viewed as firm clients and not clients of the individual lawyers. . . . By the 1990s, the transition to a client production system transformed clients into the property of individual lawyers who collect profits from ‘their’ clients’ work. In this new environment, a client has come to be defined as a ‘scarce’ commodity.”

In most law firms, the power of personal relationships significantly impacts the way in which client generation and retention credits are allocated, as well as the client succession process when partners responsible for a client relationship retire or leave the firm. Disagreements, infighting, and inequities frequently arise with respect to who should receive origination credit or whether it should be shared, as the stakes are financially significant. Both men and women are impacted by a compensation model that results in such behavior. But like other structural issues that have a negative impact on lawyers of both sexes, the persistence of these behaviors has a disproportionate effect on women. Research shows that women are often excluded from the internal networks where male colleagues assist one another’s efforts and, in many cases, are bullied or otherwise intimidated by more senior male colleagues who aggressively pursue credit allocation.

One example of the way in which credit allocation discourages institutional thinking can be found in firms whose systems do not make appropriate adjustments for lawyers who transition into new roles. For example, many firms provide an opportunity for partners to share credits with other partners, but they are not expected to share credits with associates. As a result, an associate can be assigned work from a valued client, which keeps billable hours high, while the partner who originates the work retains financial credit.

Once the associate is elected to partner, however, the workflow may suddenly cease. As a result of the promotion, partners who are reluctant to share financial credit with their new partners will reassign the work to more junior lawyers, even though there is no client-service reason to do so. Nonetheless, the work is transitioned to other associates—until they, too, become partners. This is devastating for newly-elected partners who lose their workflow before they have generated their own client base. It is also highly inefficient for clients.

This scenario was described in numerous interviews in Lauren Stiller Rikleen’s *Ending the Gauntlet: Removing Barriers to Women’s Success in the Law*. Women spoke of the nega-
tive impact of a system where, as associates, they provided dedicated client service, only to be without work once they became a partner because other partners now viewed them as a potential competitor for origination credit and the compensation that accompanies such credit. Critically, some of these women reported that the partners with whom they worked during their years as associates actively discouraged them from generating their own business while serving these clients, notwithstanding any generalized firm encouragement to do otherwise. Rather, they were pressured to focus their full efforts on maintaining high billable hours and remaining fully accessible to the clients of the partners who assigned them the work. When the loyal associates then became partners, however, that workflow disappeared.49

The reach for client credit can lead to more than unfair treatment—it can also lead to irrational behavior. For example, in an interview for Ending the Gauntlet, a former associate spoke about a senior partner who demanded that she hide her role in work he presented to clients to ensure that the client and the firm viewed the partner as key to each work product produced.50 Similarly, women frequently described circumstances where, for example, male rainmaking partners shared billing origination or responsible attorney credits with other male partners considered critical to their practice, but did not do so with women who were similarly important contributors.51

**Gender Inequity in the Distribution of Bonuses**

The Edge survey reported that, in each of the countries it analyzed, the use of bonuses as an element of partner compensation has significantly increased since 2006 as has the amount of average bonuses.52 As with the allocation of client origination credits for a new matter, bonus pools also can result in an arbitrary distribution of additional compensation with results that adversely affect women.53 These results are not restricted to the legal profession, as other studies reveal.54

A study with significant applicability to the legal profession analyzed the gender pay gap among stockbrokers where compensation is strictly commission-based. The study described how bonuses and other merit- and performance-based compensation are impacted by “performance-support bias,” that is, where women receive inferior support and assignments, leading to a gap in performance.55

The gender gap in bonuses is an aspect of the gender gap in compensation that warrants equal scrutiny and a commitment to alter the circumstances that produce the disparate results.

**Opaque Transparency**

The ability of partners to measure whether a compensation process has gender-specific impacts depends, to a large extent, on whether the system is “open” or closed, whether partners have full access to one another’s compensation, or whether partners know only their own numbers and not the compensation of their colleagues. In closed systems, absent a specific process in place to monitor the results, determining gender equity is a matter of trust, rather than as a verifiable outcome.
The Edge survey reported that firms were moving away from open compensation systems, and that “the U.S. has the smallest percentage of firms reporting an open system at 73%.” Some firms with open systems, however, reported restrictions, for example, limiting review of the information to in-person availability only in the managing partner’s office. Other firms restricted access to information through the inclusion of “some ‘need to know’ provisions, i.e., practice group leaders and partners involved in assembling client service teams and ‘availability upon request.’”

A trend toward restriction of information could have far-reaching impacts. Women who suspect that they are being shortchanged in their compensation, or systematically excluded from certain practice groups or other internally available opportunities to advance their careers, cannot prove their concern because they are denied access to verifying information.

The Composition of Compensation Committees and the Comfort of Similarity

In any committee vested with decision-making power over others, the composition of that body will impact the results. Yet few compensation committees reflect the diversity of the talent pool within their own firms.

In 2010, the Project for Attorney Retention and the Minority Corporate Counsel Association, in collaboration with the ABA Commission on Women in the Profession, surveyed women partners about compensation in their law firms (ABA/PAR/MCCA study). The results revealed widespread dissatisfaction with both process and results. Women partners reported that law firm compensation committees were composed overwhelmingly of male members. One-fifth of the ABA/PAR/MCCA study respondents reported that their firm’s compensation committee had no women members. Approximately half of the respondents reported that their firm’s compensation committee had only one woman member, with another one-fifth of respondents reporting compensation committees with only two women members.

The impact of the lack of diversity on such important decision-making bodies has long been studied. The results demonstrate that having no women or appointing only one or two women to an otherwise all-white-male committee can lead to biased results and marginalization of the minority participants. This principle was strikingly and simply described decades ago by Rosabeth Moss Kanter in *A Tale of “O”: On Being Different in an Organization*, in which Kanter used Os and Xs as a metaphor to describe the difficult task minority group members face when trying to fit in with their majority colleagues—while being judged by different standards. In her tale, the O stands out in a workplace full of Xs, and is burdened by an obligation to continually demonstrate competence to the more numerous Xs. The O feels pressured to overachieve as the sole O representative, even as counterpart Xs succeed by being more average. Sometimes the O becomes less visible—working behind the scenes or taking on the helper or assistant role to the more dominant Xs.

When this dynamic is understood in the workings of, for example, a compensation committee, it is easier to see that adding a woman to an otherwise all-male group places
an unrealistic burden on the singular woman to expect that, by her presence, she is representing the voice of women generally. In fact, the addition of only one or two women is unlikely to have an impact that changes the pay differential for women and other minority groups within the firm.

As demonstrated in a study of the experiences and observations of women directors, CEOs, and corporate secretaries, this dynamic does not change until, at minimum, there is a “critical mass” of three or more women. As the study noted: “Having three or more women on a board can create a tipping point where women are no longer seen as outsiders and are able to influence the content and process of board discussions more substantially, with positive effects on corporate governance.”

The importance of achieving a “critical mass” of women on law firm management committees was demonstrated in a study by the New York City Bar Association (NYCBA). In 2011, the NYCBA surveyed those law firms that signed onto its 2003 statement of diversity principles. One of the goals upon which the signatory firms agreed was a commitment to increase diversity in leadership positions. The data revealed a correlation between firms that reported a minimum of three women on their management committee and the promotion of women into the partnership ranks. Specifically, those firms with no women on the management committee promoted significantly fewer women than did those firms with three or more women management committee members. As the report stated, this result may not prove causality, “but it does suggest that having women at the leadership table, not as tokens but reflecting the full diversity of women in the profession and across levels at signatory firms, likely helps to prioritize diversity over the long term.”

The critical link between the exclusion of women from full participation in the compensation process and its impact on firm culture was succinctly summarized by the NAWL survey: “If a firm’s culture and policies are not developed with the input of all appropriate constituencies, they are unlikely to reflect the values and goals of all of its lawyers, and thus it is only to be expected that those whose views went unheard (whether women, minorities, or other marginalized groups) ‘vote with their feet’ and leave the law firm in search of a more responsive, supportive professional environment.”

This concern was further described in a law review article analyzing future challenges to women in the legal profession. “It is also likely that women who do not take part in the decision making at their firms may also account for the number of women who are dissatisfied with their opportunities for advancement.”

It is important to stress that even a democratically elected compensation committee may not result in the election of diverse members, as partnerships are overwhelmingly male. As will be further highlighted in the recommendations section, democratic systems of elections may benefit from developing procedures to increase diverse representation.

**Unconscious Bias and the Compensation Process**

Biased outcomes are not always the results of intentional conduct. In fact, research demonstrates that everyone carries implicit biases that affect how they view and evaluate others. This research reveals how these biases emerge in the workplace and, ultimately,
impact the way in which women are evaluated and compensated. The following are a few examples demonstrating the often unexpected ways that implicit biases affect the judgment and evaluation of others.

One recent study suggests an important connection between the barriers women face at work and the marriage structure of their male colleagues. A collaboration of researchers from multiple universities studied the attitudes and beliefs of employed men from homes where their wives did not engage in paid work, worked part-time, or were employed full-time. The data revealed that the employed husbands whose wives did not work outside the home or who worked part-time were more likely to:

- Have an unfavorable view about the presence of women in the workplace;
- Perceive their workplace was running less smoothly if there were higher percentages of women, compared to perceptions of their workplace if there were fewer women;
- Find workplaces that have female leaders as less desirable places to work; and
- Evaluate female candidates for promotion as less qualified than comparable male colleagues.\(^{64}\)

Another study examined the relationship among volubility (the amount of time an individual spends speaking in group contexts), gender, and power. The research found that even women in powerful positions generally speak less than their male counterparts. When the researchers analyzed the reasons for this difference, they found that high-powered women feared a potential backlash from speaking too much. But the most critical finding of the study was that they were, in fact, correct in their concerns. “Results showed that a female CEO who talked disproportionately longer than others in an organizational setting was rated as significantly less competent and less suitable for leadership than a male CEO who talked for an equivalent amount of time.”\(^{65}\) Of central importance to understanding how implicit biases affect everyone, the study found that both men and women reacted similarly, demonstrating that “backlash effects result from beliefs about existing gender hierarchies that are shared among both men and women.”\(^{66}\)

Most people strive to be of good will and most think of themselves as without bias. One detailed study looked at how individuals can “endorse egalitarian values and regard themselves as nonprejudiced but . . . nonetheless discriminate in subtle, rationalizable ways.”\(^{67}\) The answer can be found in what the researchers called “aversive racism,” which arises when “socially appropriate behavior is not clearly defined,” allowing an individual to justify a response to another person as attributable to something other than one’s own prejudices.\(^{68}\) “That is, aversive racists are unlikely to discriminate solely on the basis of a person’s social category membership, but when presented with information that supports their biases, they will discriminate in ways that can be justified by this information.”\(^{69}\)

This dynamic can also be seen in the study of informal networks that can become critical to an individual’s advancement and compensation within an organization. Here, the research is clear: “The benefits of having informal networks are not the same for women and men . . . Women are less likely than men to have high-status network members and to have diverse networks.”\(^{70}\) In this study of informal networks within a major
U.S. business, the data revealed that, even when holding jobs of comparable influence and status, women received less instrumental help from their networks than did men.

Informal opportunities can play a key role in advancement and compensation decisions. When women have less access to the informal network structures upon which people rely to advance themselves and their friends, however, the result is continued inequity. As the study warns, women who turn to the formal system of advancement may be further marginalized in the face of a workplace in which the informal structures drive the decision-making process far more than a formalized human resources structure without real authority.71

This description of a human resources infrastructure that lacks power, juxtaposed with a strong informal system where internal networks play a critical role in advancement and compensation, is likely to sound very familiar to those working in most law firms.

**Gender Bias Fatigue**

“Second generation discrimination” manifests itself more implicitly than explicitly, but nonetheless has negative consequences that are harder to identify, and can be even more pernicious. Most workplaces today describe themselves as gender neutral. Studies demonstrate that even where gender inequities exist, they are “masked by a strong rhetoric of gender equality, which makes articulating experiences of gender discrimination difficult.”72

This “gender invisibility” may be due to a desire to demonstrate a progressive attitude by insisting that gender equity has been achieved, knowing that being perceived otherwise is no longer socially acceptable.73 In her study of “gender fatigue,” Professor Elisabeth Kelan summarized this dynamic: “Gender fatigue refers to a moment in time in which gender discrimination may still be a feature of modern workplaces but is repudiated in such a way that workplaces appear to be gender neutral.”74

When systemic discrimination is disguised or ignored, the results can be devastating for individuals: “This leads to a situation in which even if women confront gender discrimination, they often feel powerless to challenge it because they assume that there are individual reasons for the situation rather than believing that gender might have a bearing on their treatment.”75 This “individualization” can result in women feeling personally responsible for a discriminatory behavior, allowing the perpetuation of a public narrative that the workplace itself is gender neutral: “Women construct themselves as active agents who can avoid confronting gender discrimination through making themselves responsible for overcoming it.”76 But as a result, the underlying problems are compounded because gender fatigue “contributes to the lack of language needed to discuss structural inequalities between men and women, making gender inequality even more difficult, if not impossible, to address.”77

The desire to describe one’s own workplace as gender neutral and, therefore, any discrimination as individualized, may explain why both men and women may rally around an organization that is accused of acting in a biased way. An example of this can be seen in the public statements a workplace issues after being sued for gender discrimination or when criticized for not promoting women into key leadership roles. In such situations,
it is not uncommon for women to be quoted in defense of the workplace’s practices. These responses are common in situations where, once one becomes an insider, there is a vested interest in presenting one’s organization “in an egalitarian light.”

The Failings of Expert Advice

For decades, law firms have depended upon a cadre of go-to experts for their strategic advice, including in the development and implementation of compensation systems. Most of these experts are knowledgeable about existing law firm structures and have wide-ranging expertise regarding the economic models that drive law firm profitability. Their advice, however, generally perpetuates the status quo because of two key failings: (1) the advice does not connect diversity and inclusion into the reward structures of the firm, and (2) the experts fail to recognize that diversity and inclusion must be part of the organizational fabric of the firm, and not separated from the rest of the firm’s leadership.

This failure to recognize the systemic relationship between these factors wrongly results in a separation of culture and economics. In fact, culture and economics drive each other. At the heart of a firm’s culture is its compensation process. When the results of that process are not equitable to traditionally excluded groups, the firm is impacted by poor morale, continued exclusionary behaviors that may pit a partner’s own economic interests against the long-term interests of the firm, and the likely attrition of talented lawyers.

A review of articles by compensation consultants demonstrates that, even as these experts talk about the importance of firm culture, they do not address gender equity or diversity as an element of that culture. For example, a comprehensive survey of compensation systems conducted by a leading expert in the field reported on the composition of these committees, specifically with respect to whether there was representational democracy. In reporting the survey response, the expert listed various factors that he viewed as demonstrative of representational democracy. Significantly, this lengthy list did not include women and representatives of other non-majority groups, nor did the list include the concept of proportional involvement on executive and compensation committees. The failure to include such factors in this analysis speaks volumes about how these issues are continually relegated to separate committees that too frequently lack the resources and leadership commitment needed to ensure their success and to change behaviors.

Similarly, a recent book on law firm compensation does not mention diversity, inclusion, or gender. The topics of pro bono engagement, teaching, writing, speaking, training, and teamwork barely got a paragraph each. And there is scant discussion of culture.

Another article by a compensation consultant addressed strategies for compensating partners in a difficult economy. Raising the fear of business generators leaving for more lucrative opportunities, the author observed that, with respect to compensation decisions, firms are moving away from the former practice of considering partner performance across a range of several years, and looking instead at a much shorter time horizon. The article concluded by emphasizing that, to avoid losing key performers, good compensation decisions should focus on short-term performance.
A compensation strategy that focuses on short-term producers, however, may take the firm down a potentially dangerous path. If a compensation committee is primarily rewarding large producers, it is not incentivizing other behaviors that could strengthen the firm, for example, the promotion of teamwork. The committee could misjudge a producer’s strengths and loyalty. For example, the partner might be shielding the importance of other lawyers in the firm to his overall revenue numbers. Moreover, the producer may be easily vulnerable to an attractive offer from another firm and leave after a significant distribution, just in time for a new firm’s revenue cycle. Finally, advice that focuses on the short term fails to recognize the importance of incentivizing behaviors that may create a stronger organization over the longer term—one that can weather difficult economic periods because the firm’s culture is focused on achieving institutional stability.

Disparate Compensation as a Litigation Risk

Law firms should be engaged in efforts to create gender-equal compensation systems for a variety of reasons. Such systems will:

- Result in a stronger and more cohesive firm culture;
- Promote institutional sustainability; and
- Maximize the opportunities for clients to receive the best possible decision making from a team of diverse individuals.

And, of course, taking steps to ensure gender equity is the right thing to do.

Even beyond these compelling reasons, however, is another very real concern: the growing risk of litigation. And underlying that risk of litigation is research demonstrating that “antidiscrimination enforcement shows effects” with respect to increasing representation for women and minorities in management.79

In December 2012 and in January 2013, two global law firms were separately sued by senior women for, among other reasons, unfair compensation. The 2012 complaint, brought as a class action gender discrimination suit on behalf of female shareholders, alleged that the firm’s subjective compensation system—in which the decision-making authority is in the hands of a compensation committee consisting of five men—resulted in a process “fueled by gendered assumptions and stereotypes.”80 The complaint also alleged violations of the Equal Pay Act and that the firm engaged in a pattern of gender discrimination that directly affected compensation. The alleged discriminatory actions included assignments of work; the calculation of client origination credits; the allocation of firm resources; the calculations of time-keeper revenue; client pitch participation; and compensation policies, practices, and procedures. On behalf of the class action, the plaintiff sought a variety of remedial measures to be implemented and $200 million in “back pay” and “front pay,” and in compensatory and punitive damages.81

The 2013 complaint was filed by a woman who had been terminated by a global firm during her leave to adopt a child. The plaintiff alleged that, notwithstanding a history of excellent performance reviews, she was denied salary increases and adequate bonuses because of her gender, age, and family responsibilities. Included in the plaintiff’s prayer
for relief was a request for $5 million in compensatory and punitive damages as well as back pay and reinstatement or front pay.82

Whatever the merits of these particular lawsuits, they demonstrate that the potential for costly litigation is a significant reason to take steps to ensure an equitable compensation system.

**Using Settlements as a Change Agent**

A recent and widely publicized resolution of a gender discrimination lawsuit provides an unusual example of an open settlement that, in effect, served as part of the remedy. Although the case involved the medical profession, the facts and resolution have broad applicability. It is particularly of interest for the legal profession because the disclosure of the key terms was part of the settlement itself, and not withheld in a confidentiality provision.

The complaint was brought by Dr. Carol Warfield, the female former chair of the department of anesthesia, critical care, and pain medicine at Beth Israel Deaconess Medical Center and a physician with a distinguished track record. As the complaint detailed, Dr. Warfield described years of sexist treatment by a physician hired as chief of surgery, notwithstanding a reputation stemming from his prior employment for creating a hostile environment for women in the workplace.

One aspect of the complaint that should be of significant concern to law firms is the alleged response of the CEO of the hospital when his intervention was sought. In response to Dr. Warfield’s efforts, according to the complaint, the CEO declined to help and “revealed his own gender bias and his inclination to retaliate against even a senior woman physician who raised concerns about discriminatory treatment. He told Dr. Warfield to stop ‘playing the victim.’ He chided her, letting her know that, in his view, her complaints about discrimination marked a lack of leadership. He accused her of creating a ‘culture of whining.’”83

The case settled in early 2013, and, most unusually, the terms of the settlement were not shielded behind a confidentiality provision. The settlement authorized plaintiff’s counsel to release the following information:84

- Dr. Warfield received a settlement payment of $7 million;
- The hospital agreed to reaffirm and clarify its policies and procedures to ensure that all employees have mechanisms available to them to raise concerns about discrimination and retaliation;
- The hospital agreed to sponsor an annual lecture series addressing women’s health concerns in surgery and/or the academic contributions of women in surgery; and
- Dr. Warfield retained her distinguished professorship and the hospital renamed its pain center to honor her.

In an area of litigation in which settlements remain cloaked in confidentiality, the notion of a plaintiff in a gender discrimination lawsuit presumably requiring public disclosure of the core terms is extraordinary. The publicly-disclosed resolution of the terms of this discrimination lawsuit is a noteworthy precedent.
PART TWO
Creating a Culture That Supports Institutional Sustainability and Gender Equity

Managing for the Future

By rewarding certain behaviors over others, law firm management has an opportunity to influence the types of behaviors it hopes to encourage in its attorneys. Most firms, however, fail to use the allocation of compensation as a powerful tool to create a more level playing field. But those firms that choose to use compensation to incent positive practices such as objective performance evaluations will see an additional benefit: behaviors that will help create a more successful and sustainable organization. And corporations that are strongly committed to gender equality may send referrals to those law firms that demonstrate a similar commitment.

Choosing a Fairer Compensation Process and a Stronger Future

Firms have it within their power to implement a truly gender-neutral compensation process as quickly as associate salaries increased in the early 2000s. In fact, as described above, history tells us that as soon as one or two major law firms implement a significant
change that can be viewed as a recruitment and retention advantage, the tipping point theory may likely lead to other law firms similarly responding. As scrutiny of partner compensation continues to increase as a result of media attention on, for example, profits per partner, the first law firms to implement significant structural changes in their systems that result in strong team behaviors and gender equity will likely be quickly emulated.

The ABA Task Force on Gender Equity recommends twelve practices that can positively impact the compensation process and result in gender equity in law firm compensation. It is important to add that the Task Force purposefully did not propose a model compensation policy, respecting that each firm’s policy is deeply rooted in firm culture and was likely created or updated following a lengthy and resource-intensive effort.

Accordingly, the recommendations in the next chapter are directed to law firm leaders and are proposed to fit within existing compensation policies. To be successful, however, these practices will require a firm-wide commitment to their effective implementation, and that commitment must begin with the firm’s leadership. With that commitment in place, however, success is inevitable.

Moving from “Me” to “We”

The foundation of any effort to create gender equity in the law firm compensation process consists of recommendations that will build a stronger and healthier firm for the future. It also will involve changing long-standing behaviors that continue to persist, for example, where lawyers see themselves as individual practitioners first and, therefore, make decisions based on that perception. This lack of institutional thinking is rampant in even the most sophisticated law firms. Without institutional thinking, however, firms are impeded from implementing processes and policies that are otherwise in the best interests of their clients as well as the best interests of the firm.

In 2008, more than 100 leaders of the legal profession attended the National Association of Women Lawyers’ National Leadership Summit, “From Theory to Action: Advancing Women Leaders in Law Firms” (NAWL Summit). The compensation process was a critical area of focus during the NAWL Summit. Attendees urged moving “from ‘me’ to ‘we,’ to institutionalize the client and promote teamwork over individual silos.” Many of the recommendations below focus on ways lawyers can move beyond the solo practitioner thinking that has been such a long-standing aspect of private practice and that, today, contributes to the “blackmail approach” that firms face from rainmakers who explicitly threaten to take their business to another firm or whose potential departure is feared as an ongoing “implicit threat.”

There are many lessons to be learned from other successful professional service entities. One large consulting firm prides itself on a compensation system that is clear and transparent and that measures a full range of activities and engagements. Billable hours and client generation are a part of that analysis, but organizational advancement requires a focus on sustaining a culture of teamwork, community engagement, and a commitment to a diverse and inclusive workplace. One cannot succeed without behaviors that
demonstrate a commitment to the organization, including talent development. These models can be replicated in law firms of any size. In fact, they are long overdue.

Each of the following recommendations can be implemented individually. To see positive, sustained results, however, the recommendations should be adopted collectively as a firm-wide effort to transition individually focused behaviors and a short-term orientation toward an institutional framework that is in the long-term interests of the entire organization.

Overcoming Challenges and Resistance to Change

Many of the following recommendations are likely to be met with some resistance, if not actual skepticism. For example, firm leaders may resist changes that provide for greater transparency on the basis that they need more leeway and flexibility in their decision-making process. Moreover, a transparent system where progress toward minimizing the gender gap is monitored and reported could result in the creation of internal data that, partners may fear, might be used against the firm—not recognizing that by focusing on these issues in a systemic way, the firm may actually be thwarting a lawsuit or positioning itself to better defend one.

Law firms may resist a call for a diverse compensation committee, stating that committee members have earned the right to be there, either by virtue of their firm governance experience or their significant contributions to the economics of the firm. Similarly, there may be significant anxiety around altering—and even formalizing—a long-standing system by which credit for client origination and related activities are disseminated. What if it results in under-compensating an important rainmaker, putting the firm at risk of his or her departure?

Partners may resist the creation of a formal dispute resolution mechanism to address a claim that credit has not been fairly allocated for a particular client. After all, firms may feel they already have mechanisms in place as partners can raise concerns to the practice group leader or the management or executive committee.

And it is easy to call for full diversity on all pitch teams, but what if the firm does not have a diverse attorney for a particular area of substantive law to bring on a pitch? Moreover, the idea of a formal system that oversees the succession of client credits may upset long-standing internal relationships or may be unfairly dismissive of the way the firm currently tries to internally manage client succession.

Firms may eschew calls to reward a variety of activities that do not directly correlate to billable work, but do correlate to institutional sustainability. Partners may state that only direct client services should be compensated; otherwise, revenues may decline.

Change is difficult. Objections may be fairly raised, but they can be overcome by a firm-wide commitment to a team-oriented environment that rewards contributions equitably. Once the opportunities are understood and the positive results begin to emerge, the barriers to change are more easily overcome.

We invite law firm leaders to view the following recommendations through the lens of the possibilities they offer for the future.
Recommendations for Law Firms—Addressing Structural Barriers

RECOMMENDATION 1: Build Transparency into the Compensation Process

Implementation Checklist

- All factors upon which compensation decisions are made should be in writing and communicated to all partners. Whether the firm uses a formula or a modified system, provide detailed information about all elements of the system.
- Provide a written communication explaining all aspects of the compensation process, including:
  - Who is on the compensation committee?
  - When does the compensation committee meet?
  - What factors are used in determining compensation?
  - When will its decisions be issued?
  - What opportunities do partners have to provide input into their own review?
- Once the compensation committee announces its results, provide an appeal process that addresses:
  - Does the partner have an opportunity to present his or her appeal in person before the compensation committee?
  - Are all members of the compensation committee involved in the review process?
  - When will a decision on appeal be rendered and how will it be communicated?
Prior to finalizing and announcing the compensation results, the compensation committee should review its draft recommendations to check for “internal equity,” analyzing to ensure there has been consistent application of the compensation factors and to determine if any of those factors are adversely impacting women or minorities.

If the analysis reveals imbalances, determine whether factors beyond what is articulated in the compensation policy may be impacting the result.

Benefits of This Recommendation
To determine how well a firm’s compensation criteria are understood, law firms should test partners by requesting each one to take a test: Ask each partner to explain the criteria upon which advancement and compensation decisions are made. Then compare the extent to which the answers vary among the responses. Chances are high that in most firms there will be significant variation among the answers, indicating that firm leaders have not clearly communicated the basis for making fundamental decisions. Perhaps compensation decision-makers themselves do not have consensus as to the answers. If, however, lawyers are unable to fully understand all the factors upon which decisions that shape their career advancement and their income are made, how can they understand the firm’s strategic vision?

Transparency is critical to a firm’s ability to implement a strategic vision. Transparency is also important to the creation of a gender-neutral compensation process, as can be seen in the above discussion of the various ways in which implicit biases and informal networks disadvantage women. To prevent this result, the written policy should explain “what factors actually play a major role in a firm’s compensation—to talk about realities rather than aspirations.”

As the ABA/PAR/MCCA study noted, “Gaining this information often will require a statistical analysis to identify what factors are actually influencing compensation, as opposed to what factors are announced to have an influence.” For many firms, the lines blur between what is articulated as important and what is actually included in the decision-making process. A transparent system, therefore, collects and analyzes all relevant data and uses that information to ensure that it is communicating a coherent message about what the firm values. As the firm implements measures to increase transparency and to eliminate the gender gap in compensation, year-to-year results should be routinely analyzed to track progress.

RECOMMENDATION 2: Include a Critical Mass of Diverse Members on the Compensation Committee

Implementation Checklist

- Create a process that results in a diverse compensation committee.
- Build transparency into the selection process to ensure that conflicting messages are not sent to the partners.
Benefits of This Recommendation

The inclusion of, at best, only one or two women on law firm compensation committees “creates the risk of the unhealthy dynamics that surround tokenism.” To move beyond this dynamic, firms should include within their appointment or election process steps that will ensure a diverse and inclusive committee.

There is substantial reason why firms should ensure the involvement of a critical mass of women on their compensation committee—as well as other top governance committees. Companies who have more women in key leadership roles and board positions outperform their competitors: “These statistically significant studies show that companies with a higher proportion of women on their management committees are also the companies that have the best performance.”

The Task Force recognizes that there are many different ways to achieve this result. For example, firms that have a nominating committee could be tasked with bringing forward a diverse slate of candidates—both for the nominating committee and the election to the compensation committee. Other firms may choose to create at-large seats as a way to designate diversity until diverse leadership becomes more embedded in the culture.

Firms may also seek to solicit a wide range of diverse candidates for consideration. The term “binders full of women” has firmly taken its place in popular culture. The effort behind it, however, was a well-considered and well-executed process by which the Massachusetts Government Appointments Project (MassGAP) identified and vetted women candidates for the newly-elected Massachusetts governor to consider for appointment to high-level government positions. Firms could develop their own “binders of resumes” by soliciting candidates from their affinity groups and otherwise encouraging diverse candidates to put themselves forward.

To be successful, this process must be managed transparently. For example, as the ABA/PAR/MCCA study observed, systems that elect compensation committee members can be influenced by a nomination process that preselects certain candidates, or otherwise signals who firm leaders support. An elected system may correct for that dynamic by presenting a diverse slate for consideration.

Creating a truly inclusive compensation committee takes concentrated effort and commitment, particularly if the firm’s selection process is entrenched in historic culture. The change, however, should come more easily in light of growing client expectations that their lawyers offer diversity of thought and engagement at all levels of activity.

RECOMMENDATION 3: Develop Systems to Promote Fair and Accurate Allocation of Billing and Origination Credit

Implementation Checklist

- Develop a transparent process for the equitable distribution of credit.
- Allocate credit in ways that promote team, not individual, behaviors.
- Encourage and incentivize partners to distribute credit fairly among those who participate in the business development or pitch activities that successfully bring a client
to the firm, are responsible for key roles in serving the client and developing client loyalty, and manage and expand the client’s relationships throughout the firm.

- Discourage the “hoarding” of client business through the compensation process.
- Promote cross-marketing among practice groups through opportunities to share in the success of the effort.
- Annually review the way in which credits are allocated to ensure that women and minority lawyers are included in these important client development activities.

**Benefits of This Recommendation**

The current “underground” system for the allocation of credit for various roles in client origination, service, and retention that exists in so many firms today is a major impediment to achieving compensation equality. As law firms continually increase the pressure for lawyers to generate client work, it is necessary that the process for allocating credit for successful business development be managed in a fair, equitable, and transparent way. To truly be run like a business, firms should do no less.

The ABA/PAR/MCCA study recommended that credit be more fairly divided among teams, rather than individuals, considering such roles as “who brought in the work, the billing partner, the partner who manages the client relationship, and the partners who actually do the work.” The ABA/PAR/MCCA study also stressed the importance of providing credit to the lawyer whose work “currently binds a given client to the firm.” This would result in a broader allocation of credits for contributions to client development and retention than currently exists in many firms. It would also have the benefit of increasing team commitment to the client development process.

Models exist for expanding credit opportunities. An example of such a system allows a lawyer to claim only a certain percent of the credit, leaving a significant percent available to be distributed to others. Another example is a process where partners who share credit are rewarded.

As noted above, some models are set up to ensure the sharing of credit by breaking up the concept of a single origination credit into multiple forms of lawyer contribution. Thus, for a new client or new matter, partial credit may be distributed among several lawyers who have played a role in introducing the client to the firm, bringing in the matter, and doing the work. There may also be a multifaceted credit structure for when there is a new matter for an existing client.

In some instances, credit can be double-counted, which is a model used in other professional service organizations. Thus, the level of credit for bringing in a matter may be 5 percent—but if two people close the deal, they each could get 5 percent.

Models where client credit is distributed along multiple dimensions to multiple partners encourage teaming and cross-marketing. The ultimate benefit is greater retention of clients, growth of firm business, and investment of multiple professionals in client service and satisfaction—as well as a greater chance of equity in the allocation of credit for the business.
RECOMMENDATION 4: Require Diversity in Pitch Teams and Related Business-Development Efforts and Ensure That Diverse Lawyers Become a Part of the Client Team When Successful

Implementation Checklist

- Law firm leaders should track the diversity of every pitch team.
- Such tracking should include:
  - who receives credit for a successful pitch; and
  - whether those assigned to work on matters include those who participated in the pitch.
- Similarly monitor credit and work allocation for new matters from existing clients.

Benefits of This Recommendation

The process by which lawyers are invited to participate in “client pitches”—where a presentation may be made to a prospective client or for new work from an existing client—varies significantly among firms. Sometimes, the attorneys selected to participate are part of a structured process, such as one managed by the marketing department, where pitch team members are chosen for a wide range of considerations that can include, for example, substantive law expertise and diversity. In other firms, the process is less structured, and individual lawyers have wide discretion to put together teams for a client pitch.

However the team is developed, the research shows that, too often, participants do not reflect the diversity of their clients or the diversity that clients have come to expect in a global environment. Women face a particular challenge when they are included in the actual client presentation. Specifically, even when they may be invited to participate, if the effort is successful, they may not be included in the actual work that results from the pitch, nor recognized with internal credit for their role in bringing in the new matter or new client.

Few firms have formal procedures in place to ensure that a diverse team is selected and that those participants are appropriately credited for their role. The ABA/PAR/MCCA study recommended that firms develop clear and “widely disseminated” policies requiring that “if a woman or person of color is invited on a client pitch, that attorney needs to be given part of any origination credit that results from the pitch—and part of the work.” Effective diversity and inclusion require no less.

The Task Force recognizes that there may not be a diverse pool of candidates for the substantive law needs of every potential pitch. That is, however, a talent development challenge that can be addressed over time through recruitment. Firms should commit to examining practice groups where there is a lack of diversity and commit resources to recruitment to ensure the talent pool fully reflects the needs and expectations of the clients. Increasingly, clients are demanding diverse teams on pitches, and a failure to address a lack of diversity will put firms at a competitive disadvantage.
One large professional services organization described their pitch team process as built to foster collaboration and teamwork in business development. At the pitch, the client is presented with detailed information about the proposed members of the client team, and the company’s internal system tracks all phases of the client development process. Once the development process has concluded successfully, everyone involved is allocated credit.

**RECOMMENDATION 5: Reward Behaviors That Promote Institutional Sustainability**

**Implementation Checklist**

- Identify and reward those activities that contribute to the long-term sustainability of the firm, including:
  - Internally-focused activities such as mentoring, sponsorship, and related talent-development roles, committee participation, and leadership in initiatives that are related to the firm’s strategic goals;
  - Externally-focused activities that promote the law firm and contribute to its positive branding among lawyers and in the greater community, including, for example, speaking, writing, leadership roles in community organizations, and bar association involvement;
  - Contributions to the justice system through pro bono engagement; and
  - Shared engagement in client development activities such as cross-marketing.
- Reward partners who demonstrate a track record of hiring, training, retaining, and advancing women within their client teams and practice groups.
- Hold accountable those lawyers who do not contribute to the long-term sustainability of the firm through these varied activities.

**Benefits of This Recommendation**

Firm leaders should reward behaviors that they state are important by valuing those behaviors in the compensation system. This includes monitoring and recognizing the varied contributions that partners make to the long-term viability of the firm. The failure to do so negatively impacts women disproportionately: “Women lawyers often are under significant informal pressures to make such contributions, for example, through service on committees related to recruitment, associate development, and diversity.”

Firms invest in their future when they recognize through the compensation system the value of lawyers spending time on the activities that contribute to firm management, talent development, efforts to generate business, pro bono work, and bar association engagement. Firms should monitor who participates in committees and activities that provide valuable—but previously insufficiently valued—branding, marketing, and support functions. Too often, women are asked to participate in committee roles that are not recognized in the compensation process and that their male colleagues often avoid.
for that reason. Law firm leaders need to understand who is contributing to the wide range of activities that are necessary to the internal functioning of the firm, and reward these activities in the compensation structure.

It is also critical to reward—through the compensation process—those partners who help to retain and advance diverse lawyers and, conversely, to hold accountable those lawyers whose practice reflects a poor record of diversity and inclusion with respect to retention and advancement. By measuring these efforts, the firm sends a very clear message that this behavior is important and will be appropriately recognized or otherwise addressed. This is consistent with the compensation processes used in a number of other professional service organizations and businesses, where talent development is valued and rewarded.

The Task Force recognizes that the weight each firm allocates to these activities will vary and that, for the many firms who do not financially reward sustainability efforts, the process will evolve over time. Accordingly, the Task Force takes no position on how much each effort should count for in the compensation system but does urge that the process be developed through an open communication among all key constituencies in the firm.

All law firms require a variety of activities that contribute to their future sustainability, beyond client billable time. Compensation systems need to genuinely recognize this value monetarily and promote engagement in these activities.

**RECOMMENDATION 6: Implement Formal Client Succession Protocols**

**Implementation Checklist**

- Implement guidelines for lawyers to create, in effect, a legacy plan, revised annually, to:
  - Identify critical members of client teams;
  - Develop strategies for deepening those client relationships with other lawyers and practice groups in the firm; and
  - Implement a system of credit succession that must be approved by a diverse committee empowered to do so.

- This legacy plan should be reviewed by an oversight committee to ensure that women are included in all aspects of client service opportunities.

- Engage associates in business development by creating a process that allows them to share in the credit allocation system.

**Benefits of This Recommendation**

To better understand the origin of “rainmaking” credits that impact compensation decisions, law firms should compare the client generation statistics of women and men younger than 50 (the age cutoff is arbitrary; the goal is to capture the younger genera-
tion of partners). For each lawyer, analyze the origin of the client generation credit, specifically:

- What percentage came via direct inheritance of a client from a more senior lawyer?
- What percentage came through the sharing of credit with another lawyer?
- What percentage came from the development of new work from an existing client?
- What percentage came from the development of new business from a new client?

The results are likely to be enlightening with regard to the origin of business generation credits for women and men. Analysis of these metrics may reveal that the reason why men statistically have more business generation credit is because they are better positioned within the firm to inherit or otherwise share in credit as a result of their relationships with more senior male colleagues.

The time for law firms to develop clear and transparent guidelines for the succession of client relationships is long overdue. Institutional stability and future sustainability are dependent on firm management’s willingness to address a challenge long avoided: the transition of credit for client relationships and the concomitantly smooth transfer of work for clients once a partner retires (or otherwise leaves the firm in a situation in which the client is not leaving with the lawyer).

It is simply unsustainable to think of one’s organization as a sophisticated business while allowing a key component of that business—client management—to be subject to the whims of individual lawyers who insist on making their own decisions about client credit and succession. This issue has a tremendous impact on compensation, and women have historically been—and continue to be—excluded from fully sharing in these opportunities. The failure to create clear guidelines around client succession is both economically harmful to women and is not in the long-term interests of the firm.

Many firms do not recognize the contributions of associates in the formal credit allocation system, even when they have played a major role in the client’s engagement with the firm. This can have a long-term negative impact on the associate’s transition to partner, as previously discussed. Accordingly, it is in the strategic business interests of the firm to incentivize associates to participate in business development by allowing them to share in at least a portion of the credit allocation process.

### RECOMMENDATION 7: Measure and Report Results

**Implementation Checklist**

- Assess the baseline—compare the compensation of men and women at every level of the firm.
- Include in the baseline analysis gender comparisons among offices and among practice groups.
- Monitor and report access to important opportunities such as the:
– Number of women invited to participate in pitch teams;
– Roles that are assigned to women on pitch teams;
– Allocation of both credit and work if the pitch is successful;
– Number of women responsible for high-profile matters;
– Number of women participating on high-revenue client teams; and
– Number of women invited to participate as speakers in firm presentations.

Benefits of This Recommendation
In order to understand and then control for gender bias in compensation, firms should continually measure progress. This involves, first, the development of baseline information, followed by “regular monitoring and analysis of the impact of a given compensation system on out-groups.” Disparities cannot be addressed without the metrics with which an organization can track the steps being taken and the results over time.

It is important that the metrics take into account all areas of the firm, including individual practice groups and office locations. For example, each practice group should know how it compares to others with respect to pay equity, just as each office should be analyzed to ensure that women in one location do not earn disproportionately less than those in another, as compared to their male colleagues. Leadership roles, too, should be reviewed and compared throughout the firm to determine where women may not be comparably benefitting.

All factors relevant to the compensation system should be analyzed, including metrics to ensure that business development opportunities are shared and available to all lawyers. Metrics should be accessible for review so every partner can see where there is a need for attention and improvement and where good role models exist.

RECOMMENDATION 8: Develop a Process to Resolve Allocation Disputes Promptly and Equitably

Implementation Checklist

• Create a formal dispute resolution process to resolve disagreements among lawyers who believe they have not been fairly treated in the credit allocation system.
• Partners selected to oversee the process should understand the firm’s strategic goals, be skilled in listening and helping people reach consensus, and be diverse.
• The partners involved in this process must be fully empowered to resolve the dispute.
• At the conclusion of the process, provide the parties with a written explanation of the results.
Benefits of This Recommendation

As discussed previously, the development of a process to allocate credits fairly and inclusively is a critical component of a gender-neutral compensation system. But for such a process to work, it must also include a method for resolving the disputes that inevitably arise.

Because the stakes are so high, those who are designated to resolve these disputes should be skilled in dispute resolution qualities and be diverse. The process should offer an opportunity for all involved parties to express their concerns with respect to the allocation of credit in dispute. The parties should also have the opportunity to offer a recommendation for resolving the dispute fairly (at least from the perspective of each of the participants).

The NAWL Summit identified the importance of a powerful and diverse oversight committee to resolve disputes that arise in the allocation of client credits: “Creation of an oversight committee consisting of diverse and powerful partners to provide guidance and to address these situations is critical.”\(^{103}\) Such a committee could be imbued with power to resolve disputes over the allocation of credit for new and existing work “by reviewing credit and attribution, tracking opportunities, measuring results, and holding partners accountable.”\(^{104}\)

The ABA/PAR/MCCA study supported this recommendation, noting that failure of a clear process to address these issues creates a compensation system where “hidden bias flourishes.”\(^{105}\)

The importance of empowering a diverse oversight committee to review and resolve disputes over the allocation of credit cannot be overstated. It would eliminate the current practice where such disputes are either addressed privately, or not at all, but almost always result in simmering resentments. Moreover, research suggests that by creating or designating a committee that has clear responsibility for resolving these issues—a structure that embeds accountability—the firm increases the likelihood of its success. “Broadly speaking . . . although inequality in attainment at work may be rooted in managerial bias and the social isolation of women and minorities, the best hope for remedying it may lie in practices that assign organizational responsibility for change.”\(^{106}\)

**RECOMMENDATION 9: Implement Training for All Involved in the Evaluation and Compensation Process**

**Implementation Checklist**

- Implement annual training for all lawyers and staff involved in evaluations, advancement, and promotion decisions; implement additional training for those involved in the compensation process.
- Implement organizational responsibility structures that hold individuals accountable for results.
- Implement training specifically related to the self-evaluation process, including:
  - training to women focused on writing a self-evaluation; and
  - training reviewers of self-evaluations.
Benefits of This Recommendation

To address the many ways in which unconscious biases can negatively impact judgments in evaluations and related compensation deliberations, law firms should institute annual training for all attorneys and staff involved in any aspect of the evaluation process. This recommendation is meant to cast a wide net because careers are built upon or hampered by the subjective judgments of others.

Additional training should also be provided to members of the compensation committee “to ensure that they do not penalize women for self-promotion, do not discount women’s successes, do not award men more compensation ‘because they have a family to support’ or award women less compensation ‘because they have someone to support them.”

Research analyzing the efficacy of corporate programs designed to promote diversity indicates that training in the absence of responsibility structures are less effective and, under certain circumstances, can generate backlash. “Diversity training, evaluation, networking, and mentoring programs are more effective in firms with responsibility structures.” Accordingly, training programs should be designed to focus on the systems that impact assignments, evaluations, and compensation. To maximize effectiveness, such training would be part of a comprehensive effort that incorporates other recommendations of the Task Force, particularly those that include accountability.

Training should also directly address the ingrained forms of bias that emerge—from both men and women—in reaction to self-advocacy by women. The ABA/PAR/MCCA study recommends developing “a memo that delineates what is expected and encouraged in self-advocacy memos and conversations, outlining the type of information required and describing what is inappropriate self-advocacy.”

As highlighted in the report prepared for the ABA Commission on Women in the Profession, Fair Measure: Toward Effective Attorney Evaluations, the key to a fair measurement of performance is “to put in place training and procedures that correct for the stereotypes that reflect hidden—but correctable—bias that flows from gender schemas that influence perceptions about what makes a good lawyer, a good colleague, a ‘player,’ or a ‘go-getter’. . . Such bias affects how ambiguous information is interpreted, which information is remembered and for how long, and what conclusions people draw about causation.”

The good news about implicit bias training is that knowledge of the way unconscious stereotypes are formed can help reduce or eliminate the impact of such biases. First, the training helps individuals recognize their own biases and the way stereotypes are formed. Second, by understanding these biases, an organization can put in place structures to help override the effect of these biases.
RECOMMENDATION 10: Engage the Client’s Role in Gender Equity

Implementation Checklist

• Partner with clients in encouraging the use of in-house purchasing power to advance women lawyers.
• Work with clients and firm practice group leaders to ensure that women are on the team handling the client’s work and are appropriately credited for their work internally.
• Include the client in the decision-making process when designating key successors to the client’s work in the firm and to ensure that diversity goals are being implemented.

Benefits of This Recommendation
Clients have a remarkable opportunity to use their purchasing power to change the face of private law firms. By doing so, they also help to ensure diversity and stability (by lessening the likelihood of female attorney attrition) in their outside counsel representation. When clients include women lawyers in the competition for their business, they offer critical client generation opportunities that will help women in law firms advance.112

For similar reasons, clients also have a special role to play in closing the gender gap in compensation. This is not about their meddling in the internal processes of another business. Rather, it is about ensuring efficient, effective, and loyal teams working on their matters. Firms should welcome the input of the clients in this process as part of an overall client retention strategy.

As a companion publication to this report, the ABA Presidential Task Force on Gender Equity has published Power of the Purse: How General Counsel Can Impact Pay Equity for Women Lawyers.113 This manual focuses on the role of general counsel—as law firm clients—in helping law firms achieve gender equity in compensation. It highlights best practices used by some of the top general counsel in the country to ensure that the teams working on their matters are diverse, and that such diverse team members are appropriately recognized within their law firms for the excellent work they do on behalf of their clients. It is an act of self-interest for a client to ensure that firms are able to retain female talent.

This focus on the important role of general counsel is an outgrowth of an effort begun by the ABA Commission on Women in 2008, when it hosted its first National Summit for In-House Counsel. This summit focused on the economic power that clients can wield to make a difference for women in the profession. Since that initial summit, the Commission has sponsored a series of regional summits around the country to continue the discussion and engage in-house counsel in identifying strategies they can employ to promote gender equity at law firms.

The client has a special role to play with respect to many of the proposals made here, including the designation of individuals in law firms to manage their work as billing part-
ners retire or leave the firm. The historic practice of law firm partners deciding, without consultation, to whom they wish to transfer credit for a client’s work both perpetuates gender inequity and may result in decisions that would not be of the client’s choosing, had the client been consulted.

Excellent service should be recognized and rewarded, and clients can help ensure that happens by clarifying their expectations to those who manage their outside counsel work.

RECOMMENDATION 11: Implement Systems to Ensure Equitable Compensation for Partners on a Reduced-Hours Schedule

Implementation Checklist

- Designate a balanced-hours coordinator whose responsibilities include working with firm leaders to ensure that partners on a reduced-hours schedule are fairly compensated. This includes attention to:
  - Opportunities for reduced-hours lawyers to work on important client matters, contribute to marketing and business development, and otherwise contribute to the firm in proportion to colleagues working a standard schedule.
- Develop a system to compensate reduced-hours attorneys for hours worked in excess of their reduced-hours arrangement.
- Eliminate stigma that attaches to both women and men who choose to use existing policies.

Benefits of This Recommendation

Fair compensation is critical to the success of a reduced-hours program. The ABA/PAR/MCCA study identified steps that firms can implement to ensure the existence of an equitable system demonstrating the firm’s full support of its reduced-hours program. Specifically, the ABA/PAR/MCCA study recommends that firms ensure proportionality in the percentage of pay to the hours worked, and avoid any penalty that results in a disproportionate differential; compensate partners for hours worked in excess of their reduced-hours arrangement; and include in the compensation decision-making process the additional contributions to the firm that partners on a reduced-hours schedule make, such as committee involvement and participation in governance.

When a lawyer on a reduced-hours schedule is not fairly compensated or when “schedule creep” results in working longer hours—usually without a concomitant adjustment in salary—the likelihood of that lawyer leaving increases. “At that point, a self-fulfilling prophecy of part-time lawyers takes over. . . . Doubts about that lawyer’s commitment to the firm are confirmed and the negative views of part-time attorneys are reinforced.”

It is also critical for law firms to take steps to remove the stigma that often accompanies the use of existing policies to address family responsibilities. For women, the stigma
inevitably results in further marginalization that negatively impacts not only compensation, but also the assignment of work, opportunities to participate in important client generation activity, and the perception of that woman's commitment to her career.

For men who seek to reduce their hours, this stigma is also burdensome and negatively impacts career development. Nationwide, far fewer men than women have worked part time. The impact is substantial and severely hinders the opportunities for working families to develop shared family care arrangements that allow the careers of both spouses to flourish.

RECOMMENDATION 12: Maximize the Effectiveness of Affinity Groups

Implementation Checklist

- Law firm leadership should support women's initiatives in the development of strategic goals to address internal challenges by:
  - Assessing demographic data by practice group, office, and leadership roles to determine whether data shows outliers with respect to women's opportunities for advancement and comparable compensation; and
  - Creating one or more task forces of men and women to develop short- and long-term goals to address the internal challenges identified.
- Develop a budget that will provide sufficient resources to meet the initiative's strategic goals.
- Avoid false measures of success that are not consistent with the internally developed strategic goals.

Benefits of This Recommendation

Women have a significant source of collective power: each other. In addition, they have the power of leverage by engaging law firm leaders and other affinity groups in their efforts. Through the strategic use of women's initiatives, and particularly with the support of firm management, women can advocate for institutional changes and can implement programming to help women lawyers develop skills that will support increased compensation.

This power, however, has been largely untapped. The NAWL Foundation, in 2012, conducted an important study of women's initiatives in the nation's top law firms (hereinafter “the Women's Initiatives study”). The goal of the Women's Initiatives study was to determine how these initiatives are functioning and to identify the types of resources they are provided within their law firms.

The findings demonstrated that the strategic use of women's initiatives is a significant source of potential strength that, in most instances, has been too limited in its scope of planning and programming. The Women's Initiatives study reported that, within most of these efforts: “There is an abundance of ‘soft’ programs—networking stands out as the prototype—and not enough programs targeting the factors that have a direct
impact on advancement within firms." To address this issue, the Women’s Initiatives study recommended “more focused approaches to enhance their goals, strategies, and functioning.”

The second critical finding of the Women’s Initiatives study is that most are “woefully underfunded,” and that a “typical law firm spends far less on their women’s initiatives than the salary of a first-year associate.” The Women’s Initiatives study makes clear that there is significant opportunity for firms to fund these efforts more robustly and to encourage a far more strategic approach to programming.

As women work together through their affinity network, it is important to resist efforts to measure their success simply by how many new clients may have come to the firm as a result of a networking or client development event. “This is a false measurement and would only undermine the reason for establishing such an initiative in the first place, which is to assist the firm’s effort in the retention and promotion of women attorneys. Accordingly, to the extent a firm seeks to measure the success of its women’s initiative, it should track the number of women it has retained, and how many are elevated to partnership and firm leadership positions.” Of course, that tracking should also include the equitable distribution of compensation.

Today’s women’s initiatives must be about working with women to both “lean in” and “lean on.” Facebook COO Sheryl Sandberg sparked enormous debate and a national conversation with her book *Lean In: Women, Work, and the Will to Lead*, which urged women not to lean back prematurely and to seize leadership opportunities that could propel their careers forward. Even as her book details important research on unconscious bias, its focus is on what women need to do differently, rather than what changes are needed in the workplace. But workplace leaders should think structurally, even as they seek to achieve personally. Sandberg’s synthesis of the data on unconscious bias, of the importance of women supporting other women, and of the need for our homes to be as egalitarian as we want our workplaces to be is an important contribution. But her message will only be truly successful if her book encourages men and women to use their power to change the norms and structures of the workplace.

An effective women’s initiative should be part of an overall strategy of advancing women and ensuring pay equity. *Working in concert with firm leadership, a women’s initiative should be part of a collective effort to create a law firm where gender equality is as embedded into the firm culture as excellent client service.*
Conclusion

The long-standing and continuing gender gap in compensation should be considered unacceptable in any business. That gender disparity is so entrenched in the legal profession is particularly troubling in light of our profession’s principles. Justice not only includes what we seek for our clients, but it also includes equal access to opportunities to succeed in our own workplaces.

Internal structures of law firms must catch up to the growth rate firms have experienced over the past few decades. Too many law firms have grown faster than their infrastructure’s capacity to manage, support, and develop their talent. Firms of fifty lawyers cannot be run like solo practitioners; firms of 500 lawyers cannot thrive without institutional structures that focus on talent management; and firms that are supporting thousands of lawyers must develop a far stronger commitment to long-term sustainability.

At the heart of any talent management process is a fair and equitable compensation system that is built to incentivize all the right behaviors—that is, behaviors that make the organization stronger each day. This can only be accomplished by creating a culture where economic growth and inclusive opportunities are linked together through active and engaged leadership and through transparent systems. Such a culture would ensure a vibrant workplace where everyone is engaged in the strategic mission of the organization, and where everyone takes pride in their contributions to the firm’s development.

Pay equity, institutional sustainability, and legacy are intricately bound together. They provide the foundational building blocks of a successful organization. When law firms demonstrate commitment to these foundational principles, they ensure equal opportunities for all.
Lauren Stiller Rikleen is the president of the Rikleen Institute for Strategic Leadership, which 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.

Her background includes an extraordinary focus on issues relating to the advancement of women in the profession. As the former president of the Boston Bar Association, she established the Task Force on Professional Challenges and Family Needs, which produced a nationally-recognized report, Facing the Grail—Confronting the Costs of Work/Family Imbalance. As a member of the Massachusetts Equality Commission, she worked with the MIT Workplace Center in the Sloan School of Management to conduct research on the path of women’s careers in large firms, which resulted in the publication of Women Lawyers and Obstacles to Leadership. Ms. Rikleen currently serves as a member of the board of directors of the Massachusetts Women’s Political Caucus, is a founding member of the Council for Women of Boston College, and is the co-chair of MassGAP.

In August 2008, she began serving a three-year term as a member of the American Bar Association Board of Governors, having just completed a three-year term as one of twelve members of the ABA Commission on Women in the Profession. Her current ABA roles include member, Presidential Task Force on Gender Equity; co-chair,
Women's Caucus; co-chair, Rights of Women Committee and secretary of the Section of Individual Rights & Responsibilities; member, Commission on Sexual Orientation and Gender Identity; and member, Law Student Division Advisory Council.

Ms. Rkleen is also a trustee of the Boston Bar Foundation and a trustee of the Middlesex Savings Bank. Within her community, she is the first woman to have served as chair of the MetroWest Chamber of Commerce.

She is the recipient of numerous awards, including the Friend of the Division Award from the Law Student Division of the American Bar Association, the Leading Women Award from the Girl Scouts of Eastern Massachusetts, a Woman of Justice by the Massachusetts Lawyers Weekly, the Barbara Gray Humanitarian Award from Voices Against Violence, the Boston College Alumni Award for Excellence in Law, the Boston College Law School 75th Anniversary Alumni Award Medal, and the Lelia J. Robinson Award from the Women’s Bar Association of Massachusetts. The MetroWest Chamber of Commerce previously named her Business Leader of the Year and subsequently granted her the Athena Award.

As a former law firm equity partner, Ms. Rkleen 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.

Ms. Rkleen 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, Law360, New York Lawyer, and the Glass Hammer. She is frequently requested to appear as a keynote speaker and to lead programs and workshops addressing gender and diversity, workplace issues, generational issues, and the topic of unexamined bias.
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.
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.
Endnotes


2. Ed Wesemann & Nick Jarrett-Kerr, The Edge Inter

ational 2012 Global Partner Compensation System Survey 3 (May 2012). The factors were further described in an e-mail exchange between Lauren Stiller Rikleen and study author Ed Wesemann. [As noted in a study conducted by the Boston Bar Association, compensation formulas generally do not address the expenses associated with an individual’s revenue production. “Any individual expense has minimal impact on a partner’s compensation because the cost is distributed among all partners.” Boston Bar Association Task Force on Professional Challenges and Family Needs, Facing the Grail: Confronting the Cost of Work-Family Imbalance 17 (1999).]

3. Id. at 4–6.
4. Id. at 5.
5. Id.
6. Id. at 4.
7. This example of a “tipping point” in the legal profession is described by Lauren Stiller Rikleen in Ending the Gauntlet: Removing Barriers to Women’s Success in the Law, 5–7, (Thomson West | Legal Work 2006). The book describes a similar “tipping point” that occurred when one law firm instituted a casual dress policy that resulted in immediate changes in the dress codes of other law firms.
8. Interestingly, although the increase in associate salaries that took place in 2000 was dramatic and had a tremendous reverberation across the profession, it is not the only time that firms have used increases in starting salaries as a lure for top law school graduates. For example, by the late 1980s, bidding wars had begun to have a significant impact on the profession. See, e.g., Eleanor M. Fox, Being a Woman, Being a Lawyer and Being a Human Being: Women and Change, 57 Fordham L. Rev. 955, 958
(1989) (“Having bid up the ‘price’ for entering lawyers...the firms are demanding yet more billable hours from each associate.”)

9. NALP Found., Keeping the Keepers II: Mobility & Management of Associates 15 (2003). Nonetheless, the compensation climb continued. Exploring these issues at the beginning of the new millennium, Professor Deborah Rhode noted that: “The median income for attorneys is now over five times that of other full-time employees, and the legal profession has become the second highest paying occupation. Yet while wealth has been rising, satisfaction has not, and there is little relationship between income and fulfillment across different fields of practice.” Deborah L. Rhode, In the Interests of Justice: Reforming the Legal Profession 31 (2000).

10. Id. at 58.

11. Id. at 66–67.


13. Id.

14. Id.

15. Id.

16. María Pabón López, The Future of Women in the Legal Profession: Recognizing the Challenges Ahead by Reviewing Current Trends, 19 Hastings Women's L. J. 53, 60 (Winter 2008). The study found that: “The areas in which female attorneys experience significant disparity compared to their male counterparts include financial compensation, perceptions of competency, and perceptions about their commitment to the practice of law.”


18. Mary C. Noonan, Mary E. Corcoran, & Paul N. Courant, Pay Differences Among the Highly Trained:
Cohort Differences in the Sex Gap in Lawyers’ Earnings, 84 Social Forces 853, 859 (2005). Of importance, the study also reported that women are less likely to be married, have fewer children, and are nearly twice as likely to be childless as their male classmates.

30. Id. at 867.


33. Id.

34. Id. at 68.

35. Noonan et al., supra note 29, at 868.


38. Critically, the NAWL survey reported that “a significant fraction of the responses” it received came from firms with only one tier of partnership. Accordingly, the sample demonstrating the compensation gap for non-equity partners may not be of sufficient size to draw conclusions about relative compensation in two-tier partnerships. Id. at 13.

39. Lattman, supra note 18.


41. Harry Keshet, Keshet Consulting Inc. & Angela A. Meyer, Compensation in Law Firms: The Impact of Gender, Race and Ethnicity 6 (2013) [Note: The author extends deep appreciation to Harry Keshet and Keshet Consulting for providing a pre-publication review copy of this important study and for his significant time in telephone conversations and e-mail exchanges.]

42. Id. at 9.

43. See, in particular, Chapter 8 of Evelyn Murphy & E. J. Graff, Getting Even: Why Women Don’t Get Paid Like Men and What to Do About It 175 (2005). Murphy noted that: “almost every woman has a story of the time she lost out—on recognition, or praise, or promotion, or pay—simply because she was Working While Female.”


45. Id.

46. Wesemann & Jarrett-Kerr, supra note 2, at 6.


48. See, e.g., Fox, supra note 8. See also Joan C. Williams, the Project for Attorney Retention, & Veta T. Richardson, the Minority Corporate Counsel Ass’n, New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women (2010).

49. Rikleen, supra note 7, at chapter 6. These anecdotes occurred with some frequency during the author’s interviews with women partners.

50. Rikleen, supra note 7, at 99.

51. Rikleen, supra note 7, at chapter 6.

52. Wesemann & Jarrett-Kerr, supra note 2, at 7.


54. For example, a study in the United Kingdom reported that women receive less than half the average bonus amount that men receive. See Gender Pay Gap ‘at Risk of Worsening,’ say campaigners, BBC News (November 6, 2012) available at http://www.bbc.co.uk/news/business-20223264. See also Louise Marie Roth, Selling Women Short: Gender Inequality on Wall Street (2006). This book describes the way in which merit pay can be significantly undercut by the impact of both unconscious biases and discrimination.


56. Wesemann & Jarrett-Kerr, supra note 2, at 8.

57. Id.

58. Joan C. Williams, the Project For Attorney Retention, & Veta T. Richardson, the Minority Corporate Counsel Association, New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women 13 (2010).


61. New York City Bar Ass’n, 2011 Diversity Benchmarking Study: A Report To Signatory Law Firms 9 (October 2012). A study by the New York State Bar Association also reported significant disparities in committee representation: “Committee memberships were particularly disparate and in ways likely to have substantial impact on salary. Specifically, women, especially in private practice, were more likely to be on committees addressing diversity and associates, but much less likely to be on executive management committees, partnership selection, or business development/marketing committees.” See N.Y. St. Ass’n Comm. on Women in the Law, Report to the House of Delegates: Gender Equity in the Legal Profession, A Survey, Observations, and Recommendations 21 (2002).


63. Pabón López, supra note 27, at 71. The article further noted that in the study of Indiana lawyers: “Thirty percent of female respondents indicate that they participate less in management decisions than similarly situated attorneys of the opposite gender, in contrast to the 4.8 percent of male respondents. More than twice the amount of women than men are dissatisfied with the level of input they have in management decisions.”

64. Sreedhari D. Desai, Dolly Chugh, and Arthur Brief, Marriage Structure and Resistance to the Gender Revolution in the Workplace (March 12, 2012) available at http://ssrn.com/abstract=2018259 or http://dx.doi.org/10.2139/ssrn.2018259. Desai, Chugh, & Brief also reviewed decades of other data measuring attitudes and beliefs that demonstrate resistance to women’s success outside the home. What they found corroborated that individual experiences are important to how individuals view gender roles and how they categorize others. Critically, this can be expressed unconsciously, which means that a male in the workplace can explicitly state that he is supportive of women, even as his implicit/unconscious beliefs result in behaviors that contradict his conscious expressions. See Lauren Stiller Rikleen, Are Women Held Back by Colleagues’ Wives? Harv. Bus. Rev. Blog Network (May 16, 2012) available at http://blogs.hbr.org/cs/2012/05/are_workign_women_held_back_by.html.


66. Id. at 461.

67. Gordon Hodson, John F. Dovidio, & Samuel L. Gaertner, Processes in Racial Discrimination: Differential Weighing of Conflicting Information, 28 Personality & Soc. Psychology Bulletin 460 (April 2002). This study analyzed the response patterns of white college students asked to review applicants for admission to their university. The study found that when presented with credentials that were clearly strong or clearly weak, discrimination against black applicants did not occur. When, however, the information was more ambiguous, patterns of bias emerged.

68. Id. at 318–319.

69. Id.

70. Gail McGuire, Gender, Race, and the Shadow Structure: A Study of Informal Networks and Inequality in a Work Organization, 16 Gender & Soc’y 303, 304 (June 2002).

71. Id. at 199.


73. Id. at 206.

74. Id. at 206.

75. Id. at 206.

76. Id. at 204.

77. Id. at 206.

78. Id. at 205.

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81. Id. At press time, this case was reported as settled. See http://www.bizjournals.com/southflorida/news/2013/05/28/greenberg-traurig-discrimination.html.
85. Two Stanford University Law School professors observed that the way firms divide profits may be “the most revealing aspect of law firm organization because it displays the balance the firm has selected between risk-sharing and incentives. . . .” Ronald J. Gilson and Robert H. Mnookin, Coming Of Age in a Corporate Law Firm: The Economics of Associate Career Patterns, 41 Stan. L. Rev. 567, 567 (1988).
87. Id.
88. This could also be a helpful test to administer to senior associates to ascertain whether they understand advancement criteria.
89. Williams, supra note 58, at 56.
90. Williams, supra note 58, at 56.
91. Williams, supra note 58, at 57.
92. McKinsey & Co., Women Matter: Gender Diversity, a Corporate Performance Driver, at 14 (2007). This report states further: “It is notable that performance increases significantly once a certain critical mass is attained: namely, at least three women on management committees for an average membership of ten people. Below this threshold, no significant difference in company performance is observed.” At 12. See also Georges Desvaux, Sandrine Devillard-Hoellinger, & Mary C. Meaney, A Business Case for Women, The McKinsey Quarterly (September 2008): “Our research has shown, first, that the companies around the world with the highest scores on nine important dimensions of organization—from leadership and direction to accountability and motivation—are likely to have higher operating margins than their lower-ranked counterparts do. . . . Second, among the companies for which information on the gender of senior managers was available, those with three or more women on their senior-management teams scored higher on all nine organizational criteria than did companies with no senior-level women.”
93. MassGAP is a nonpartisan collaboration of women’s groups whose purpose is to increase the number of women appointed to senior-level cabinet positions, agency heads, and selected authorities, boards, and commissions in the commonwealth of Massachusetts. The Massachusetts Women’s Political Caucus (MWPC) is the lead sponsor of this collaboration.
94. Williams, supra note 58, at 57.
95. See, e.g., Power of the Purse: How General Counsel Can Impact Pay Equity for Women Lawyers (American Bar Association, 2013)
96. Williams, supra note 58, at 58.
97. Williams, supra note 58, at 58. According to this survey of women partners, a majority of the respondents participated in team pitches but were not included in the resulting client work. This is also a significant issue for lawyers of color: “Over 70 percent of minority income partners, 58 percent of minority equity partners, 55 percent of white equity partners, and 48 percent of white income partners reported that in the last three years they had participated in successful client pitches in which they did
not end up billing a significant number of hours. . . . Respondents also reported that in the last three years many had participated in successful client pitches but did not receive a proportionate share of the origination credit or otherwise have their contribution recognized financially,” at 43.

98. Williams, supra note 58, at 61. See also materials submitted to the Kanter Large Law Firm Lawyer Recruitment Conference: “Some firms appear to overload inconsequential committees with female and minority members because it looks good on data that can be reported to clients, NALP, schools, and the media.” Kimball Legal Search & Consulting, The Quest for Diversity 21 (April 2006).

99. It appears that law firms are cutting back on the payment of bar association dues, and young lawyers frequently report feeling unsupported in their efforts to become involved. Bar associations provide a vibrant opportunity for lawyers to gain valuable leadership skills, be seen as experts in their field by participating in continuing legal education programs, and develop important relationships with other lawyers that can serve as future sources of business, clients, and referrals.

100. See, e.g., the NAWL Summit, supra note 86, at 5: “. . . informal systems that depend on individual partners’ decisions about who will inherit their clients tend to exclude many qualified and talented women lawyers.”

101. Williams, supra note 58, at 56.
103. The NAWL Summit, supra note 86, at 20.
104. The NAWL Summit, supra note 86, at 20.
105. Williams, supra note 58, at 59.

106. Gilson & Mnookin, supra note 85, at 611. This study analyzed various approaches to the promotion of diversity in corporations. Its results point to the importance of organizational accountability over other types of programs such as diversity training, mentoring, and networking. The application of these results to a process for addressing compensation inequalities suggests that a system designed in a way that delineates clear responsibilities and holds people accountable could help remediate these inequities.

107. Williams, supra note 58, at 60.

108. Gilson & Mnookin, supra note 85, at 611.
109. Gilson & Mnookin, supra note 85, at 607
110. Williams, supra note 58, at 60.


114. Williams, supra note 58, at 63.
115. Pabón López, supra note 27, at 96. “Considering that the majority of part-time lawyers are women, this tendency harms women’s place in the legal profession.”

116. Pabón López, supra note 27. The article further stated: “In seeking work/family balance, men have obstacles:

[M]ales get far less leeway than women to parent. Although mothers who play active childcare roles have a place in the workforce, there is little opportunity for men who want to do the same. The role of father is even more rigidly defined than that of mother, still seen overwhelmingly by men and women as being the breadwinner.” At 80.

117. Rikleen, supra note 7, Chapter 24. Women occasionally express that their efforts are met with unsupportive comments from male colleagues with respect to why a gender-based affinity group is needed. The answer is in the data: “As long as women constitute small minorities of equity partnership and leadership positions, the need exists to seize every opportunity to develop skills and networks that can lead to greater success.” At 372.

119. Id.
120. Id.
121. Rikleen, supra note 7, at 373.
Closing the Gap

A Road Map for Achieving Gender Pay Equity in Law Firm Partner Compensation

Lauren Stiller Rikleen

Publications Presented by the ABA Presidential Task Force on Gender Equity and the Commission on Women in the Profession

• ABA Toolkit for Gender Equity in Partner Compensation
• 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
• What You Need to Know about Negotiating Compensation

Visit the ABA Task Force on Gender Equity website at www.americanbar.org/GenderEquity.

All of these titles are available for download at no cost at the Task Force website.

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What You Need to Know about Negotiating Compensation
Introduction

Study after study has long shown that women lawyers are not paid at the same level as their male counterparts. 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, with a principal focus on the disparity in compensation between male and female partners. This guide is one in a series of projects the Task Force has implemented to promote gender equity.

What You Need to Know about Negotiating Compensation helps you understand what information you need to know—and where to find it—before the partner compensation process gets underway. You will find specific strategies and techniques for how best to navigate your firm’s compensation system and to strengthen and leverage your negotiating position. You also will learn about the importance of sponsors and effective self-advocacy and what you need to say about yourself. This knowledge will help you level the playing field, maximize your ability to increase your partnership compensation, and close the gender pay gap.

Special thanks go to Carol Frohlinger, Andrea S. (Andie) Kramer, and Jane DiRenzo Pigott for their hard work, insights, and enthusiasm in creating this publication. Their tireless efforts in bringing this guide to fruition are greatly appreciated.
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I. What Do You Need to Know about Your Firm’s Partner Compensation System?

It is impossible to play a “game” well without knowing its rules. Law firm compensation systems vary widely and, as with most systems, the rules that matter are not all written in the formal procedures. In fact, many of the most important rules are not. Changing trends in the profession also contribute to the ever-changing nature of most law firm compensation processes, increasing the importance of business origination and client development. Even if you feel that you’re familiar with your firm’s particular system, it always makes sense to begin your preparation for successfully navigating the process by familiarizing yourself with how the process will work each year.

What Is at Stake for You?

Law firm compensation discussions always concern salary (or your firm’s surrogate for salary, e.g., points, compensation groups, levels, or bands) and bonuses, if the firm provides bonuses for partners. These discussions also focus on whether a partner will get paid more or less than the prior year, how fast a partner should move up/down (normally based on the perception regarding the sustainability of that partner’s performance), and who the partner’s “peers” are. The compensation process clearly involves dividing up the pie, but in many law firms the conversations about relative compensation levels also impact how an attorney is perceived by firm leadership with respect to readiness for managing major client relationships and firm leadership roles. Leadership roles on important firm committees are reserved for “successful” partners, with success being defined by criteria that equate to higher compensation.
Who Makes the Decisions?

Law firms make compensation decisions in different ways. Some firms place compensation decisions in the hands of their managing partners; others invest their executive management committee or boards with the authority. Still others designate a specific compensation committee. Some firms have their practice group, client service team, or industry group leaders make compensation decisions, or put the final decision to a vote by the partners. In order to maximize your effective advocacy, determine who makes the decisions at your firm. If it is a group of people, it is important that you know which attorneys will comprise the decision-making body. Never leave your compensation fate in the hands of a group of people who do not know you or what you’ve accomplished (more about the process of advocating for your compensation below).

What Type of Compensation System Does Your Firm Employ?

Law firm compensation systems have varying degrees of transparency.

- There are open systems—“I know what everyone makes, or can easily find out.”
- There are closed systems—“I don’t know what anyone else makes.”
- There are partially open systems—“I know ranges of compensation, but do not know exactly who makes what.”

Partners of firms with open compensation systems not only reported the highest satisfaction levels, but they also reported significantly higher compensation levels than partners in firms with partially open or closed systems. Transparency in a firm’s compensation system allows a partner to understand both his/her absolute and relative standing.

1. In New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women (Joan C. Williams & Veta T. Richardson, July 2010), the Project for Attorney Retention and the Minority Corporate Counsel Association, in collaboration with the American Bar Association Commission on Women in the Profession, reported the following breakdown among law firms with regard to compensation decision-makers for equity partners:
   - management or executive committee (40%)
   - separate Compensation Committee (22%)
   - managing partner, chair, or president (20%)
   - practice group leaders (12%)
   - partner vote (7%)

2. All definitions from Jeffrey A. Lowe, Major, Lindsey & Africa 2012, Partner Compensation Survey.

3. There was a gender gap in satisfaction levels reported by partners. Twenty-eight percent of men reported they were “very satisfied” with their compensation, but only 22% of women reported the same satisfaction level. Conversely, 9% of women reported they were “not at all satisfied,” while 6% of men classified themselves the same way. Id. at 26.
Another factor in evaluating compensation systems is the degree to which the system is lockstep, i.e., compensation is based on seniority and not on ability, experience, or work product. Firms are typically divided into pure lockstep, generally lockstep but allowing some variance, and not at all lockstep. A pure lockstep system is rare.4

A third factor in the transparency of the compensation system itself is whether it is formula-driven, based on objective factors, based on subjective factors, or some variation of these three. Understanding what factors will be considered and how they will be weighted is critical to your decisions about how to get an acceptable return on the investment of your time, both billable and nonbillable.

Understanding the structural dynamics of your firm’s compensation system and the transparency of the process and its outcomes is the minimum information you need to strategically plan your self-advocacy. This information, along with an understanding of the culture of the firm and the politics of the decision-makers, allows you to ascertain your relative position and formulate your most effective arguments.

One final factor that impacts a true understanding of the partner compensation process is the partnership structure of your firm. The vast majority of big firms today are two-tier partnerships, comprised of equity and non-equity partners.5 Some firms remain one-tier partnerships where every partner is an equity partner, but these are a shrinking minority. There also are hybrid partnership structures that not only have equity and non-equity partners, but also have some fixed compensation equity partners who are required to invest capital in the firm but do not participate in the decision-making or share in the financial results as a true equity owner. The compensation process, the amount of your compensation, and your negotiation strategy can be materially impacted by where you are situated in the partnership structure of your firm.

Who Advocates for You before the Compensation Decision-Maker?

As with all compensation system characteristics discussed above, the official process will vary widely among firms. The important point is that you know who will be your official advocate before the compensation decision-making body. That knowledge enables you to strategically plan both your official and unofficial advocacy (see below).

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5. Equity partners share in the firm’s profits and losses. Non-equity partners (or income partners) receive a fixed salary and may also receive a bonus.
What Are the Criteria Used to Make Compensation Decisions?

There may be a list of criteria in the official description of your firm’s compensation process, but very few, if any, of these lists describe how the listed factors are actually weighted in the decision-making. That list may be separated into “objective” and “subjective” factors and is likely to include at least some of the following:

1. Origination credit (more about this later)
2. Working attorney receipts
3. Billable hours
4. Realization rates
5. Revenue collected
6. Personal profitability
7. Cross-selling to other practices
8. Cross-selling to other offices
9. Leverage of your practice
10. Strategic nature of your practice
11. Necessary specialty for important clients
12. Firm management participation
13. Firm committee participation
14. Practice group management participation
15. Industry team leadership
16. Client relationship team leadership
17. Institutionalizing client relationships
18. Mentoring others within the firm
19. Training others
20. Marketing yourself (and/or the firm)
21. Participation in professional organizations
22. Participation in civic organizations
23. Participation in pro bono work
24. Contributions to diversity (e.g., planning events or serving on committees)
25. Visibility (e.g., writing articles and giving speeches)

6. Major, Lindsey & Africa 2012, Partner Compensation Survey, supra note 2, at 111, defines “working attorney receipts” as the number of dollars collected (or expected to be collected) for work performed personally by an attorney in a fiscal year, even if it was actually collected in the following fiscal year.

7. Personal profitability involves a calculation of the revenue collected by the firm as a result of the hours billed by an attorney, less the expenses associated with that attorney (e.g., salary, bonus, benefits, and allocated overhead).

8. Most large firms analyze the number of people a partner keeps busy (other partners and associates) in relation to a minimum expectation for partners.

9. Industry teams are organized by client segment (e.g., financial services or energy) and work across practice groups.

10. As part of the succession planning process, some firms encourage partners to transition large clients to the firm to manage rather than handing the client over to another partner. If a client becomes a firm client, the relationship is managed by a team, rather than by a single partner.
If your firm uses a formula system, then the only factors that really count will be the ones with numeric values in the equation. In objective and subjective systems (and hybrids of the two), there is likely to be talk about the “number of factors” that are considered. However, in a recent survey, partners almost universally felt that the most important factor in any firm’s compensation decisions is origination of business, and the top three factors are originations, working attorney receipts, and billable hours. One of the key due diligence challenges for you will be to figure out which factors actually influence compensation decisions at your firm. Those should be your primary focus.

What Other Factors Count in the Compensation Process?

There are two factors that will not make any official list of factors, but which have a material impact on the outcome of the process vis-à-vis your compensation. The first factor is whether you have a mentor/sponsor who is participating in the process formally on your behalf or who sits on the decision-making body. The second factor is whether there is diversity on that committee. Research has consistently shown that having more women and minorities on a compensation committee is important to counteract any implicit biases that might otherwise affect compensation decisions. In any event, it is imperative that those on the decision-making body are informed about your accomplishments and contributions to the firm for the period under evaluation.

II. How Can You Find Out What You Need to Know?

Now that you know what you need to know, the next step is to figure out how to get that knowledge. Research shows that when women have solid information, they are more successful when negotiating for themselves.\(^\text{12}\)

Information gives you power—it enables you to focus on the criteria that matter and to be sure that what you are asking for is reasonable within the context of the firm culture and policies. It not only helps you defend your requests to others but also to yourself. We suggest you think about data gathering on two fronts—first, the **substantive benchmarking** described in Section I above and second, **intelligence gathering** about the people who will be making the decision about your compensation.

**Substantive Benchmarking**

Some of the information is available in writing from the firm, contained in the partnership agreement or other policy/procedure statements; other data are more challenging to amass. In many cases, the only way you’ll be able to get it will be to ask someone whom you trust—that’s why relationships, particularly those with sponsors and mentors, are so critical. But note that not all of the information is objective in nature, which is why it is useful to ask more than one individual to share his/her experience and perspective with you. The more people you ask, the better your analysis will be.

**Intelligence Gathering**

Although the people who are involved in your compensation decision are, in the vast majority of cases, trying to be fair and equitable, it is inevitable that firm politics as well as their personal preferences will have an impact on whether you get what you deserve.

Find out as much as you can about the people who are making the compensation decisions so you can anticipate how they’ll react. What might their concerns be? How can you make it easier for them to support you? Think about how best to make your case to each of them.

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Methodology, Timing, and Venue

Be sure to take process into consideration as you develop an action plan to garner support.

**Methodology.**

With each person in mind, think about when, where, and how best to position yourself for success. Is a face-to-face conversation likely to be most effective? Or is a phone call a better choice? We strongly caution against relying on email as the way to communicate with others regarding this sensitive subject—it can be the right choice in some situations, but should be selected for a specific reason rather than as the default.

Another point to carefully consider is whether your firm’s formal or informal processes discourage “lobbying” on your own behalf with members of the compensation committee. Instead, in many firms, it is preferable to enlist others to advocate for you with members of the committee.

**Timing.**

When does the timing work best to begin the conversations? If there are any natural windows of opportunity, for example, a meeting where there will be some time for informal conversations, take advantage of them. We suggest that compensation discussions, like tax planning, can’t get started too early in the year.

Then think about with whom you should begin. You may want to start with people who are likely to become allies because they will be easier to approach and more likely to offer you candid feedback. Or perhaps your plan is to begin with those who you anticipate will be more difficult to get on board since it will likely take you more time to convince them to support you. Regardless of what your strategy is, the key is to have one.

**Venue.**

Consider where it is best to hold these discussions. If possible, select places where you will have some measure of control—spots where you are less likely to be interrupted and will be comfortable.

Because there will likely be more than one decision-maker, you also have to think about how they will interact with one another. Is the situation such that, despite a “committee” construct, one person really makes the decision and others then fall into line? Or is it that the committee functions by majority vote? Or perhaps a consensus has to be reached? What coalitions exist and how do they operate?

An informational vacuum creates anxiety. Getting the relevant information takes away some of the uncertainty. The more you know, the easier it will be to develop the right case. With a plausible rationale and justification, you can support your argument and not be tempted to fold in the face of opposition.
III. What Is Effective Self-Advocacy?

Decades of data demonstrate a gender gap in compensation. As discussed in detail in the publication produced by the ABA Task Force on Gender Equity, the gap is “pervasive and longstanding.” As troubling as that is, there is evidence that the gap is widening.

The reasons are complicated. To a major degree, however, the cause is attributable to second generation gender issues. Second generation gender issues are workplace challenges women face resulting from either:

- cultural beliefs about gender (stereotypes and related implicit biases). For example, a woman who is assertive can be perceived as aggressive (or even worse!) instead, a trait considered unattractive in a woman.

- workplace practices or policies that appear neutral on their face but result in advantages to men. For example, origination credit policies at many firms award all (or most) of the credit for new business from existing clients to the “origination attorney” or “billing attorney,” who “manages” the client relationship. Because men are more likely than women to be in these roles, they are more likely to benefit from these sorts of policies.


14. Major, Lindsey & Africa, 2012, Partner Compensation Survey, supra note 2. $734,000 for men vs. $497,000 for women in 2012, compared to $675,000 vs. $513,000 in 2010.


16. Closing the Gap: A Road Map for Achieving Gender Pay Equity in Law Firm Partner Compensation, supra note 13, chap. 3.
Second generation gender issues are usually “unexamined”—they are “just the way things are.” Even more disheartening is that one such issue often triggers another, thereby exacerbating the damage. For example, in a firm that has an origination credit policy like the one in the example mentioned above, a woman who believes she deserves some or all of the credit has to make a difficult decision: should she ask for the credit and subject herself to the pushback she is likely to get or should she just let it go? This is known as the “double bind.” As one report termed it, a woman “is damned if she does, but doomed if she doesn’t.”

So how does knowledge about the fact that second generation gender issues exist help you? Many women believe that knowing about this research is useful as a backdrop for their conversations about compensation. They report the knowledge enables them to appreciate the context in which they are negotiating and to understand that the challenges they face are often attributable to second generation gender issues rather than individual shortcomings. As we have emphasized throughout this guide, knowledge is power in negotiation.

Second generation gender issues impact how women lawyers’ performance and contributions are assessed and, thus, affect compensation decisions. Accordingly, women must pay careful attention to these issues and how they impact firm culture to be effective at advocating for themselves.

19. Based on numerous interviews and focus groups Carol Frohlinger has conducted.
20. Joan C. Williams & Consuela A. Pinto, *Fair Measure: Toward Effective Attorney Evaluations*, (2d ed. 2008), written for the American Bar Association Commission on Women in the Profession, in collaboration with members of the ABA Section of Labor and Employment Law. The stereotyping and implicit biases that affect the evaluations of women associates also affect the evaluation of women partners in the compensation process.
What Are the Official and Unofficial Processes?

Spend some time thinking about how you want to present yourself to those who will be evaluating you. This is your opportunity to make sure that your successes are clear to those who decide your compensation. One thing you can do to ensure you have the specificity you need is to keep a written record of your accomplishments (some call it a “brag book”) and update it regularly.

The Official Process.

Let’s assume your firm, like many firms, requires a self-evaluation and reviews by others in determining attorney compensation:

- You evaluate your performance over the past evaluation period—usually one year, although it can be a longer or shorter time period.
- People with whom you have worked will evaluate your performance over the same period.

We recommend that you consider the following as you write your self-evaluation:

- Carefully follow the instructions and don’t turn in your self-evaluation late!
- Answer the questions you are asked, and describe your performance in the most positive light. Focus on your important assignments—your goal is to highlight your strengths, not to provide a detailed account of everything you did during the year.
- Confidently explain your contributions, staying on point as you do so.
- Organize statistical information on all of the client and administrative matters for the evaluation cycle in a way that is easy to understand.
- Quantify as much as possible. For example, it may be helpful to state the dollar value of transactions/trials/projects you have worked on. Focus on what you accomplished, not just on the activities you performed (i.e., return on investment, not amount invested).
- If you faced professional or personal setbacks in this review period, mention them. Because these issues can affect your performance evaluation, you should be sure to address them yourself.
- Be sure to explain the significance of and causation for increases or decreases in your numbers.
- Be sure to discuss criticisms/negative feedback you may have received in prior reviews and the actions you’ve taken as a result.

21. Reviewers may include practice group heads or others senior to you as well as peers. Peer reviews can happen in two ways. First, if a partner does work for a client of another partner (the relationship partner), the relationship partner will often review the partner’s work on that matter. Second, partners on the compensation committee evaluate the performance of other partners.

• Don’t let your numbers do the talking. Tie your responsibilities and accomplishments to your numbers and explain why your numbers show important contributions.
• The language you use should be clear, direct, and specific. Don’t use emotional words such as “hope” or “disappointed” or express anger or frustration. Speak in bullet points, not paragraphs.
• Be positive. Don’t make excuses, give explanations.

Don’t forget to use your “brag book” for specific examples as you prepare your memo. If a self-evaluation memo is not required, consider preparing a personal advocacy brief anyway. You can decide whether to submit it or simply use it as a way to keep track of your accomplishments and your successes.

With regard to getting reviewers to evaluate your work, approach them early and get their agreement to submit a timely review. Don’t assume, however, that they actually will submit a review or do it in a timely and comprehensive manner. It is up to you to provide your reviewers with the information they need to effectively and accurately evaluate you, and to encourage them to do it. You need to remind them of your contributions, highlighting the projects you worked on together.

Don’t ignore potential reviewers who might have negative or critical things to say about you. In most compensation processes, reviewers can submit unsolicited comments. If you sought out timely constructive feedback and acted on it, you are likely to have already minimized this problem and neutralized your detractors. Your response to this feedback should be part of your self-evaluation. But if not, the time to act is before the reviews are in.

The last part of the official process typically gives you an opportunity to meet with those involved in making the compensation decision. As stated earlier, each firm has its own process; you may be meeting with the compensation committee (or individual committee members), practice group leaders, office heads, or other partners involved in the compensation process. Get ready for this meeting the same way you would for a critical negotiation or court hearing:
• Prepare an outline.
• Boil down your key points.
• Know the facts by heart.
• Structure the facts as an advocate.
• Practice your presentation with a trusted colleague and ask him/her to provide feedback on both content and delivery.
• Present your achievements in a positive and direct way.23
• Be prepared to affirmatively address any issues or prior criticisms.
• Make a specific “ask.” That is, say what you expect and believe you are entitled to receive.

The Unofficial Process.

What about the unofficial compensation process? Every firm has one. Ask senior colleagues and peers how the compensation process actually works. Carefully watch how your senior colleagues navigate the process to see how things actually get done and what really does not work. Here’s one example. If the only people who can submit reviews for you must be on your “reviewer list,” develop a list that includes not only your major supporters but also other busy people who you know get many other requests. You would only hurt yourself by not including those people on your reviewer list. Include people with whom you’ve done pitches, people who know about your client relationships, and people who understand your contributions to firm culture and citizenship.

Additional Considerations

Client billing credit/origination credit.

As discussed earlier, most compensation systems give great weight to partners who are “credited” for having brought the client into the firm and for maintaining the client at the firm. Often the person getting the “credit” is not the person who actually brought the client or new matter in or who actually keeps the client’s business at the firm. To address this, you need to be sure that your contributions are detailed in your self-evaluation and otherwise communicated to those people who are making the compensation decisions. You also need to understand the political morass of “fighting” for credit.24

Uncollectible time that is not your fault.

What about uncollected time that was written off by others or because of fee arrangements negotiated by others? How can you protect yourself from criticism for uncollectible time for which you had no responsibility? Be sure you understand any billing and collection issues and address them directly. Include any contingency cases even if they are not yet resolved, providing a detailed assessment of the likely outcome and when the fee is expected to be received.

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IV. How Can You Positively Position Yourself for the Future?

Although the systemic issues that impact compensation negotiations are beyond the scope of this guide, each of us can and should reflect on things that are within our individual control. The question here is, “How can you best strengthen your negotiating position?” The answer includes immediate actions related directly to compensation, as well as long-term strategies.

Strategies Directly Related to Compensation Negotiations

Learn from your own experience.

Think about what you’ve learned from your previous compensation negotiations. What did you do that worked well? What was not effective? Then consider what actions you’ll take this time to ensure that you will advocate for yourself as successfully as you would for a client.

Get yourself in the right frame of mind.

Recognize that you don’t get what you deserve; you get what you ask for. Accept that negotiating for yourself is something you have to do—no one else will do it for you.

Anticipate challenges.

Don’t be blindsided; most of the time, you’ll be able to figure out the things people might say that you don’t want to hear. Knowing in advance what you will say in response will alleviate a great deal of stress and ensures that you will be more effective “in the moment.”
Long-Term Strategies

▷ Invest in yourself.
  Make sure you have a career development plan (including a well-developed business development strategy) and the skills to execute on it. If you don’t, close the gap.

▷ Keep a journal.
  This “brag book” enables you to recall your accomplishments when it’s time to write your self-evaluation or to regularly update important people on what you’re doing.

▷ Enlist allies.
  Purposefully identify and cultivate people you like and trust who will advocate on your behalf. These may be sponsors or others with whom you have a strong relationship. Of course, because reciprocity matters, you should always be seeking ways to help them as well.

▷ Help other women.
  More than as allies, women should be alert to the benefits of promoting qualified women colleagues for leadership roles in their firms and supporting women colleagues generally. The greater the number of women on the major governing committees of your firm, the less impact second generation gender issues will have on women generally because these issues are more likely to be recognized and addressed. Additionally, the diversity of thought that women bring to firm decision-making benefits not only women but men and the firm more broadly.

Conclusion

Negotiating for yourself about compensation can be tricky. Gender stereotypes about whether and how women should negotiate, coupled with organizational impediments, mean that women must navigate negotiation carefully and thoughtfully. Preparation is the key to success. We hope this guide has provided you with the information you need to craft a plan that will work for you.
About the Authors

Carol Frohlinger, J.D., is a consultant, speaker, and co-author of *Her Place at the Table* and *Nice Girls Just Don’t Get It*. As a co-founder of the advisory firm, Negotiating Women, Inc., she is committed to helping organizations gain strategic advantage by leveraging the talent women bring to leadership roles. Carol’s pragmatic approach, grounded in solid research, focuses on change initiatives embraced by both men and women. Carol is also an internationally known speaker on the topic of how women can negotiate with authenticity to achieve their maximum personal and professional potential. She has appeared on the *Today* show as well as other television, and her advice has been featured by CBS *MoneyWatch*, NPR, and *The New York Times*, among other mainstream media. Frequently called upon to provide expert insight by publications serving the legal profession, she also contributes articles to professional journals, Forbes.com, and *The Huffington Post*. Carol was selected by then-Senator Hillary Clinton to lecture on the issue of pay equity for women and to serve on a panel with the senator to address the causes and implications of the gender gap in pay. She has been honored by The International Alliance for Women with its “World of Difference Award” and was named to the Top 50 Most Influential Women List by the *Irish Voice*.

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

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 the 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.
Presented by the
ABA Presidential Task Force on Gender Equity
and the Commission on Women in the Profession

ABA Presidential Task Force on Gender Equity

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